

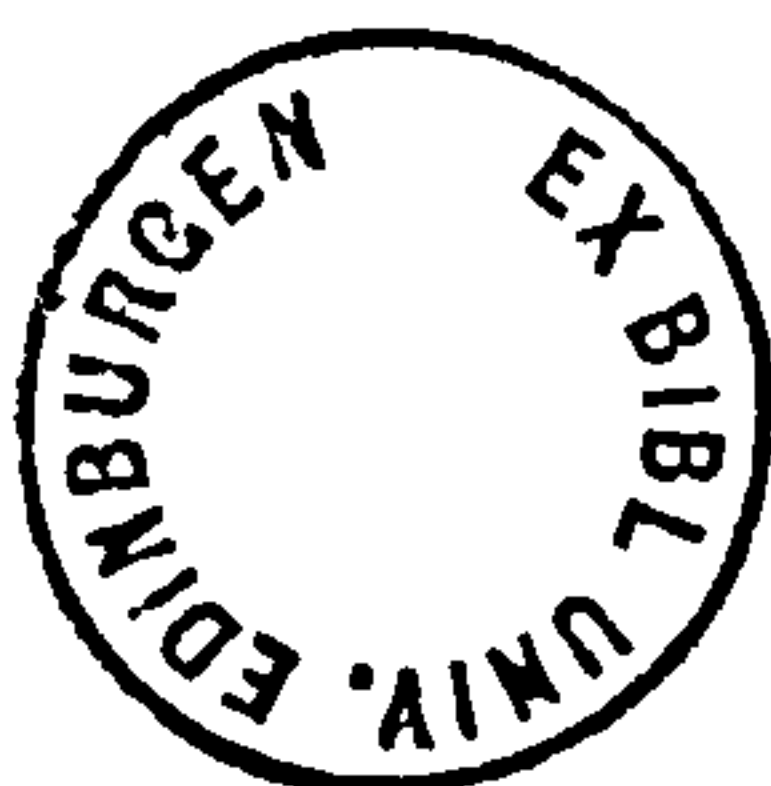
**ISLAMIC LAW AND LAND IN THE STATE OF SELANGOR,
MALAYSIA : PROBLEMS OF ADMINISTRATION AND ISLAMISATION**

PRESENTED BY

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BISM ALLAH AL-RAHMAN AL-RAHIM

IN THE NAME OF GOD, THE BENEFICIENT, THE MERCIFUL

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27 Rabiul' Awal, 1409.
Department of Islamic and Middle Eastern Studies,
University of Edinburgh,

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ABSTRACT

This research deals with the administration of faraid, wakaf, baitulmal and zakat in the state of Selangor, Malaysia. It covers the period from the British intervention in the state in 1874 to the early 1980's.

The study begins with the historical background of the state and the contributions made by the early immigrants towards the economic development of the state and the extent to which they developed the vast areas of empty land throughout the state. It then considers the coming of the British into the state in 1874 and the various commercial treaties signed between them and the Rulers of Selangor which reinforced their authority over the political, economic and administrative affairs of the state.

Chapter 2 discusses the various concepts of Malay customary laws, adat pepateh, adat temenggong and adat kampong, and seeks to explain why first two adat failed to make any inroads into the land tenure system in the state. It finally studies the work of W.E. Maxwell and the introduction of the various Land Codes, particularly

the Malay Reservation Enactment and the Torrens System by the British, which led to the establishment of a systematic approach to land administration in Selangor.

In Chapter 3, the institutions of the district office, the Small Estate Office, the Kathi, the Penghulu and the establishment of the shariah courts are discussed. These establishments can be considered to be backbone of the administration of the four Islamic concepts, particularly at the village level. The Chapter also analyses the dichotomy of authority that exists between the shariah and the civil courts in which the latter has the upper hand when it comes to making final decisions, especially in faraid cases. The problems confronting the shariah courts and the importance of the Administration of the Muslim Law Enactment of 1952 are discussed.

The components of faraid, namely wasiyat and penama, and the practicalities of their administration constitute the discussion in Chapter 4. This, with Chapter 5 may be considered to be the core of the thesis. The writer's experience in the district of Kuala Langat and the problems from two perspectives (administrative

and social) confronting the implementation of faraid at the grassroot level is utilised in the course of the discussion.

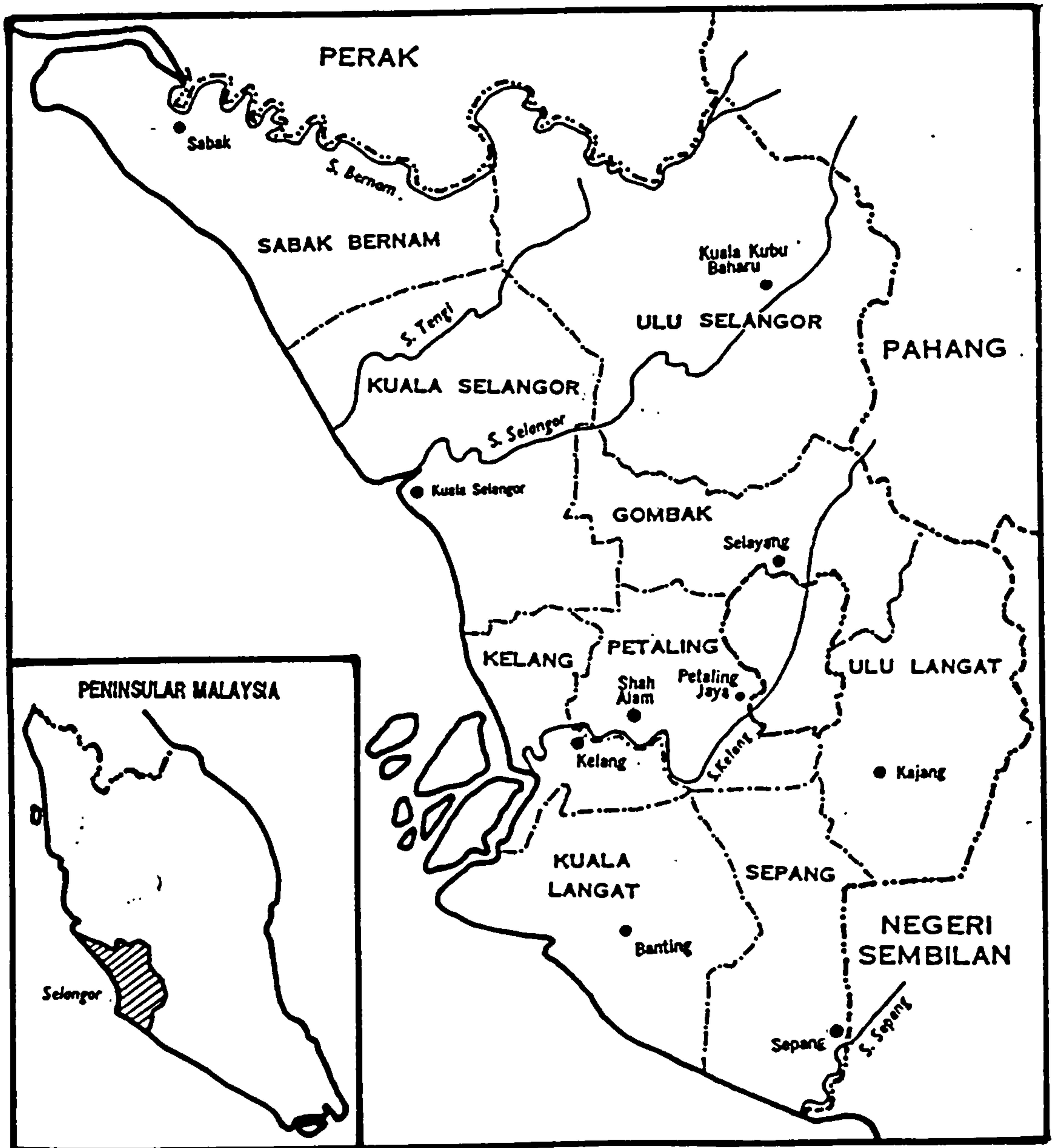
In Chapter 5 wakaf and baitulmal administration in the state is considered. This involves a discussion of these two concepts and the various types of wakaf. The nature of wakaf properties and the development of baitulmal in Selangor up till the 1980's are discussed in great depth. The chapter ends with a discussion of the problems confronting wakaf and baitulmal administration.

The final chapter contains certain recommendations by the writer which are offered in the hope that they will at least minimise if not totally eradicate some of the problems confronting the administration of faraid, wakaf, baitulmal and zakat in the state of Selangor.

NOTE ON TRANSLITERATION

In this present research it has been found most practical to use local spelling and vocabulary as found in Malaysia. Words like adat, faraid, wakaf, baitulmal or kathis are certainly adaptations of Arabic words but since they are found in this form in most reference works dealing with Malaysia, they have been retained here to avoid any confusion. In addition as far as the names of persons, places and institutions are concerned, again local spelling will be used. The Kamus Dewan Bahasa dan Pustaka (1985 ed.) is used in most local spelling. However, when it is necessary to do so, the normal system of transliteration as adopted by the Encyclopaedia of Islam with minor modifications will be utilised.

MAP OF SELANGOR STATE, MALAYSIA AND ITS NINE DISTRICTS



LIST OF ABBREVIATIONS

The following is a list of abbreviations used in the thesis.

A.B.I.M.	Angkatan Belia Islam Malaysia (Malaysian Islamic Youth Movement)
A.D.O.	Assistant District Officer
D.O.	District Officer
E.P.F.	Employee Provident Fund
E.X.C.O.	Executive Councillor
F.T.Z.	Free Trade Zone
INTAN	Institut Tadbiran Awam Negara (National Institute of Public Administration)
J.A.I.S.	Jabatan Agama Islam Selangor (Selangor Religious Department)
J.M.B.R.A.S.	Journal of the Malaysian Branch of the Royal Society
J.R.A.S.	Journal of the Royal Asiatic Society
J.S.E.A.H.	Journal of the Southeast Asian History
M.A.I.S.	Majlis Agama Islam Selangor (Religious Council of Selangor)

M.A.R.A.	Majlis Amanah Rakyat (People's Trust Council)
M.B.	Menteri Besar (Chief Minister)
M.L.J.	Malayan Law Journal
M.L.R.	Malayan Law Review
N.E.P.	New Economic Policy
P.E.R.K.I.M.	Pertubuhan Kebajikan Islam Malaysia (Muslim Welfare Organisation of Malaysia)
P.A.S.	Parti Islam SeMalaysia (Islamic Party of Malaysia)
P.T.D.	Pegawai Tadbir Diplomatik (Diplomatic Administrative Service.
S. A. W.	Ṣallā Allāhu 'alayhi wa-sallama
S.E.A.H.	Southeast Asian History
S.M.P.	Second Malaysia Plan
TABUNG HAJI	Lembaga dan Urusan Tabung Haji (Hajj Fund and Management Board)
U.M.N.O.	United Malay National Organisation

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INTRODUCTION

Although a great deal of research has been carried out on the pattern, geographical distribution and development planning of land ownership in Malaysia, the main emphasis appears to have been placed on the description of its utilization from the economic and social point of view. Little effort has been made by researchers to discover to what extent the Islamic Land Law has been successfully implemented and what are the problems encountered by land and religious administrators at the grassroot level. The Islamic Land Law in question comprises the law relating to inheritance, or faraid, wakaf and baitulmal.

It seems that little effort has been made to review or amend the various laws pertaining to land administration and the status of the shariah courts so that they can meet the necessary criteria in the context of Islamic Land Law. This situation has long hampered the implementation of the three Islamic Laws mentioned above. Despite some suggestions for the amendment of laws such as the Small Estate (Distribution) Act of 1955, development has been minimal and such proposals have received a cool reception from the Malaysian establishment. Even with the lack of interest shown by most scholars in the question of Islamic Land Law in

Malaysia, there have been a few studies which seek to identify the problems confronting this issue in a broad way. These studies are mostly related to the general administration of wakaf and baitulmal in the country.

Little research has been carried out on the early land laws which existed in the state. In Winstedt's History of Selangor, (1945), Abdul Samad 's Pesaka Selangor (1966) and Buyong Adil's Sejarah Selangor (1981), the treatment of the contemporary problem is very limited. However, as far as the general description of the land tenure system among the Malays is concerned, a very valuable source which, despite its age, throws some light on the subject is the work written by W.E. Maxwell, The Law and Customs of the Malays with Reference to the Tenure of Land (1884). What makes this work particularly important is Maxwell's experience in land administration in the state of Selangor which is very relevant to this research. Although the discussion offered by Maxwell appears comprehensive, little attention seems in fact to be given to contemporary aspects of the system of faraid and the problems faced by the land administrators dealing with this Islamic Land Law. H. E. Wilson, 'The Evolution of Land Administration in the Malay States', JMBRAS, Vol 48, Part 1, (1975) gave a survey of British-inspired changes towards land administration in the Malay States which includes Selangor. Wilson's description of the British

attitude towards Malay land is quite helpful for our research. One work concerning land inheritance among the Malays which needs to be mentioned is the article of T.B. Wilson, an agricultural economist who wrote on the basis of his own experience, " The Inheritance and Fragmentation of Malay Padi Land in Krian, Perak ", Malayan Agricultural Journal (1955). Wilson gives a detailed analysis of the changes in land ownership among the Malays in Perak, and describes the process by which padi lands in Krian, Perak have become fragmented and measures the rate of the process annually. Wilson's finding was that the Malays in the area drew heavily upon the traditional pre-Muslim adat Melayu (Malay customs) to retard the process of fragmentation. David Wong's Land Tenure Dealings in the Federated Malay States (1975) is probably the most comprehensive work that has been written on the subject of land dealings among the Malays. This in-depth study provides vital information about land tenure systems practiced by the Malays, especially during the early period of the Federated Malay States, and the various legislations pertaining to land policies. Despite the excellence of Wong's work, he gives little attention to customary land laws, the Small Estate (Distribution) Act, which affects the question of Islamic inheritance among the villagers at the grassroot level, or wakaf land. Another local writer writing about the subject is Ahmad Nazri whose work Melayu dan Tanah (1984) gives a

detailed account of Malay Land Reservation. Like David Wong, Ahmad Nazri also seems to ignore the importance of faraid or wakaf-land in Malay transactions.

The influence of adat (Ar. ‘ādah) in determining the successful implementation of faraid has attracted the interest not only of local but also of Western scholars. Perhaps the best studies on this subject are from the pens of two notable scholars, Professor Ahmad Ibrahim and M.B. Hooker. Ahmad Ibrahim's contribution in the field of Islamic Family Law and legal institutions in Malaysia has been enormous. His first published work on the subject was Islamic Law in Malaya (1960). Unlike earlier writers, Ahmad Ibrahim touches on the various institutions which bear on the process of faraid, wakaf and baitulmal. His discussion also encompasses all aspects of Islamic Family Law in the country. Although he does not elaborate in detail the functions of the religious institutions and Enactments, his work provides a source for those who wish to pursue the subject of Islamic Law in the country. The only minor drawback in this book is the absence from the discussion of the problems which confront the recently-established religious institutions, since he merely discusses the administration of Family Law. Much of Ahmad Ibrahim's work has been quoted in the present thesis. Many of his working papers have also provided useful information to

local and western scholars interested in the subject. These papers include, The Shariah Court and Its Place in the Malaysian Judicial System (1985), Islamic Law of Wills (1985), Harta Penama or Nomination (1985), and Aspek-Aspek Perchangghahan Undang-Undang Tanah Sekarang Dengan Undang-Undang Islam (1986). Another scholar whose material has been extensively utilised in the preparation of this thesis is M.B. Hooker. His work deals mainly with the legal implications of the adat, in particular Adat Pepateh. Although the concept of Adat Pepateh is non-existent in the state of Selangor, Hooker's writings give some useful information on the background and the workings of this adat. Unfortunately, he did not investigate in detail the concept of Adat Temenggong, which can be considered to be a manifestation of the Adat Kampong. These two adat in fact have some characteristics which resembles those of faraid. Works by Hooker to which the reader may be referred are Readings in Malay Adat Laws (1968), A Note on the Malayan Digest (1968), Adat Laws in Modern Malaya (1972) The Personal Laws of Malaysia (1976), Islam in Southeast Asia (1983) and Islamic Law in Southeast Asia, Chapter 3 (1984). Other local writers whose work has been quoted are Othman Ishak, Hubungan Antara Undang-Undang Islam Dengan Undang-Undang Adat (1979), Hj. Mohd. Din b. Ali 'Malay Customary Law/Family', Intisari, Vol. II, Pt.2, (1963) and Nordin Selat, Sistem Sosial Adat Pepateh (1982), who gives a good

analysis of the relationship between Islam and the adat. Nordin Selat seems to have written about Adat Pepateh in a somewhat biased manner. Being a proponent of this adat, which is widely used in the state of Negeri Sembilan, he attempts without much success to justify his claim that the concept and practicality of Adat Pepateh is not contradictory to the Islamic Law of Inheritance as practiced in most other states in Malaysia

As regards the development of Islamic legal institutions, the best account is provided by two writers, Abdul Majeed Mackeen, Contemporary Islamic Legal Organization in Malaya (1969) and Moshe Yegar, Islam and Islamic Institutions in British Malaya (1979). Both these writers give very good accounts of the functions of the shariah courts, especially Mackeen, who also discusses some of the problems confronting the Islamic legal institutions. Unfortunately, the position of the shariah courts in Selangor, as in other states, is not fully discussed. Nevertheless, the writer does to a certain extent make use of the information provided by Ahmad Rafei in his B.A. Honours Thesis Struktur, Fungsi dan Organisasi Jabatan Agama Islam Selangor (1970). Ahmad Rafei's description of the function of J.A.I.S. has been thoroughly researched, and this has made it a useful source for the preparation of the present thesis.

On the subject of wakaf, nothing concrete has been written on its administration and the problems confronted in its implementation, whether in Malaysia in general or Selangor in particular. Mohd. Zain, Islamic Law with Special Reference to the Institution of Waqf (1982), is very useful as far as the understanding of wakaf in Malaysia is concerned. Even though the book does not deal extensively with the nature and problems of wakaf land in the country, Ahmad Ibrahim is quoted as saying that the book might still be useful in helping lawyers and judges in the country to understand and appreciate the Islamic Law of wakaf. Most of the sources used on this subject in the present thesis are derived from working papers presented to country-wide wakaf seminars. As far as the specific problems of the state of Selangor are concerned, material is notably lacking.

As with wakaf, the subject of baitulmal in Malaysia has attracted very little research. Hailani Tahir's Baitulmal, Institusi Kewangan Negara Islam (1982), has been the main source of reference used by the writer. Its content is very relevant to the present thesis since Hailani successfully portrays some of the dilemmas which face baitulmal administration in Selangor. The only drawback in this work is that it does not give detailed figures and information relevant to baitulmal activities in the districts of Selangor.

For a brief discussion of the three theoretical concepts of faraid, wakaf and baitulmal, the main source of reference is the work of Imam Nawawi, whose book Minhaj-et-Talibin was translated by E.C. Howard in 1914. This is because Nawawi's view's on these subjects are accepted as authoritative by nearly all the religious departments in Malaysia, including Selangor.

Most of the books mentioned above only discuss and analyse the general theory and administration of the three forms of Islamic Law. What becomes clear from the above discussion of the works of these scholars is that very few even touch upon the administration of land within the frame of reference of Islamic Land Law in the state of Selangor.

It is the intention of the present study therefore to shed some light upon the problems confronting the implementation of the three Islamic concepts as it exists in Selangor. The state's role in the administration of these laws is important, as it was the first state in the country to introduce the Administration of Muslim Law Enactment in 1952. The efforts made by the Selangor government during this period may be regarded as a watershed in the implementation of Islamic Law, particularly with reference to land administration. Even though the Enactment did not fully realise the

aspirations of the Muslims in Selangor, it did at least provide the framework for a future efficient Islamic bureaucracy in the state. It was this that led to the creation of the Majlis Agama Islam Selangor and subsequently the establishment of the Jabatan Agama Islam Selangor or the Selangor Religious Department.

The Objective of the Study

The aim of this research is to evaluate the implementation of the Islamic Land Law from the moment the British became involved in the state in 1874 up to the 1980's.

To begin with, a brief account will be given of the foundation of the state and how Islam made inroads into the state. Here it is necessary to mention the importance of Malacca. It was from this centre that Islam spread into the Malay states, and Selangor was no exception. Given the importance of Selangor as a trading state during this period, it is easy to see how the religion was channelled into the state, that is, mainly through trading and commercial activities. Apart from this, one also has to recognise the role of the Bugis and the early immigrants from Indonesia, India and China in moulding the state as a hub of commercial activities.

Next we shall attempt to discover whether there were any land laws during the pre-British period and if so, what was their nature and to what extent they were implemented, and in particular whether the Sultans had a free hand in land matters. The role played by the British in introducing the Torrens System of land laws in the state was of prime importance during the early colonial period, while at the end of this period the Administration of Muslim Law Enactment in 1952 was another major development for which they were responsible.

Apart from the above, the research will also discuss how land administration was implemented in the post-British period, from the country's independence in 1957 up till the 80's. The discussion here will be focussed mainly on the results of the Small Estate (Distribution) Act of 1955 and in particular the increasing role of the District Officer and the State Religious Council or Majlis Agama Islam Selangor. After independence, the Majlis was no longer administratively headed by the Mufti, and instead a Director was appointed by the Menteri Besar (abbr. M.B.) or Chief Minister of the state. However, the Sultan still remained the Chairman of the Council. Later in the thesis, a more comprehensive and detailed discussion of the functions of the Jabatan Agama Islam Selangor (J.A.I.S.) will be undertaken. Apart

from administering the religious affairs of the state, the department is also responsible for the collection of zakat/fitrah, wakaf and baitulmal.

The main emphasis of the thesis will be upon the practicality of faraid, (including issues such as wasiyat and penama or nomination), wakaf and baitulmal in Selangor. This will also include an evaluation of the development and overall performance of the above Islamic Land Law in practice, and the issues involved which have a negative and detrimental effect on its smooth functioning. In dealing with the main body of the thesis, it has been felt that the problems associated with the implementation of these Islamic legal concepts can be grouped under three headings, namely social, legal and administrative. The discussion will include among other things the dilemmas faced by the Small Estate Officers and district kathis and the perceptions and attitudes of the villagers towards the institution of kathis and other religious officials in the district. As far as the role of the shariah courts is concerned, the limitations on the powers to make decisions accorded to these courts will be illustrated by citing some court cases which overrule and repudiate the Islamic Law of Inheritance. It is believed that a discussion of the practical experience of the writer while serving as an Assistant District Officer (abbr. A.D.O.) of Kuala Langat will serve to

identify the common problems faced by all his counterparts in the other districts.

In the final section of the thesis, we shall attempt to justify the argument that Islamic Land Law can be fully implemented in the state. This feeling of optimism will be reflected in the recommendations which conclude this research.

The present research is confined to a single Malaysian state, the state of Selangor. In discussing the Islamic law which governs administration in the state, the main emphasis will be given to the views expressed by Nawawi in his Minhaj-et-Talibin, (translation by E.C. Howard) and his opinions on the three concepts of faraid, wakaf and baitulmal. The reason for this is that this book has been used by the Selangor government since the Enactment of the Muslim Administration Act in 1952 and is regarded as the fundamental guide to all aspects of Muslim administration in the state.

The three concepts will be discussed quite briefly because the main aim of this thesis is not to deal with the three concepts mentioned above in detail but to study their practical implementation in the state of Selangor and the problems which arise from this. It should be emphasised therefore that the present work is in no sense

a study of legal theory or usul al-fiqh, of the problems of calculating the shares of inheritors, or other technical matters, for which the reader is referred to some of the works discussed below.

N.J. Coulson, Succession in the Muslim Family, (1971), discusses some of the technical aspects of the Islamic Law of Inheritance. Although his work concentrates mainly on the principal divergencies among the several schools on the subject, his explanation of the mechanics of the operation of faraid is of considerable assistance. His work also discussess major changes introduced into the law in modern times especially in the two principal areas of the Indian sub-continent and the Middle East. Coulson considers that in most other parts of the Muslim World (including Malaysia), the traditional law of whatever school predominates in the area remains generally applicable. He pays particular tribute to I. Mahmud, Muslim Law of Succession and Administration (1958), to whose work he frequently refers. Coulson's work can be considered the most complete study available in the extremely complex law of inheritance among Muslims, especially as it touches virtually all possibilities of, as well as the impediments to, inheritance. The writings of J. Schacht, 'Mirath' in Shorter Encyclopaedia of Islam (1961), is also important as it examines inheritance in the Qur'an and tradition.

Like Coulson, Schacht discusses in some detail the principles of law of inheritance and noted the major differences of opinion among the schools.

As regards baitulmal and zakat the work of Nicholas Aghnides, Mohammedan Theories of Finance (1916), is extremely helpful. He gives a well documented and comprehensive exposition of the Islamic financial theories in their entirety with special emphasis where necessary on the reasons underlying them. Most important of all, Aghnides' work is derived directly from the Arabic sources. Chapters 5 and 9 provide much useful information. In Chapter 5, he discusses the theoretical concepts of kharaj and mawat land and their relationship to the Islamic financial system, while in Chapter 9 the discussion mainly centres around the concept of baitulmal. Ben Shamesh's translation of three Islamic texts on taxation gives valuable information on the subject. These translated texts are extracted from the works of Yahyā b. Ādam, Kitāb al-Kharāj (Vol. 1, 1958), Qudāma b. Ja'far, Kitāb al-Kharāj (Vol. II, 1965) and Abū Yūsuf, Kitāb al-Kharāj (Vol. III, 1969). These translated works of the three legists presented some theoretical formulation on Islamic taxation which is quite helpful to the research. Schacht, 'Zakāt', in Shorter Encyclopaedia of Islam (1961), is also valuable in the sense that it

traces the origin, theory and practice of zakat among the Muslims.

It is interesting to note that little work appears to have been published in English on these subjects by Middle Eastern scholars. Perhaps the only work published is Abdul Aziz Zaid, The Law of Bequest (1987), which gives quite an extensive account of the workings of wasiyya, wakaf and faraid in Saudi Arabia. The present study has benefited from his work, especially the discussion of wakaf and wasiyya or bequest.

If there is a shortage of writers from the Middle East on these subjects, this is certainly not the case as far as writers from India and Pakistan are concerned. The work of Ameer Ali, Mohammedan Law (1929), Moulavi Babu Sahib, The Law of Inheritance in Islam (1979) and Abdur Rahman Doi, Shariah, the Islamic Law (1984), deserve special mention. Sahib's work gives detailed accounts of faraid and cites the Quranic verses which are relevant to the subject. In addition he gives detailed methods of calculating the faraid shares, which is of considerable practical value. Doi's discussion centres around the conceptual workings of the subject although it is restricted to the Hanafi school of thought.

With reference to wakaf, much has been written by writers from the Indian sub-continent and it is not possible for the writer to mention all these works here. The study of wakaf administration in India and its legal implications in the Indian judicial system attracted much interest among Indian Muslim scholars. We may mention a few of these whose work is quoted in the present thesis. These includes Syed Abdul Majid, 'Waqf as Family Settlement Among the Muhammadans', Journal of the Society of Comparative Legislation (1908), which discusses some of the legal implications of wakaf, citing some court cases in India involving wakaf properties, A. Suhrawardi, "The Waqf of Movables", Journal of the Royal Asiatic Society of Bengal (1911) and the more recent works of Ziauddin Ahmed, "Waqf as an Instrument of Perpetuity", Islamic Studies (1987) and "Waqf: An Assessment", Islamic Culture, (1986).

In contrast to the situation in India and Pakistan, research on faraid, wakaf and baitulmal in Malaysia has been very scarce indeed and it is the hope of the writer that this thesis will throw some light on the workings and development of these concepts in Selangor in particular, and that this in turn will be of assistance to those who wish to pursue the matter further.

CHAPTER 1HISTORICAL BACKGROUND OF SELANGORI. (a) Early Civilization and Geographical Position

A study of the known history of Selangor reveals that little is known about the various territories which together made up the state of Selangor.¹ Various theories have been put forward by historians as to the meaning of the name Selangor. Gullick for instance suggested that the state received its name from the Selangor River² although others have disputed this. Various early writers have put forward other theories, none of which have been widely accepted.³

As far as the evidence of an early civilisation in the state is concerned, some relics were discovered at Klang and Batang Berjuntai. These relics took the form of a few neoliths, three socketted iron tools of the type known as 'apes bones' (tulang mawas), a bronze-bell like article and more ancient iron socketted tools dug up at Klang.⁴ Such famous voyagers and explorers as Ibn Batutta, Magellan and the Chinese Admiral Cheng Ho visited the Malay Archipelago. It was believed that this Admiral normally used Chinese charts for his journeys which took place between 1405 and 1433 A.D.; among the

places mentioned in the Chinese charts were Langkawi in the state of Kedah, Pinang Island (later Penang), South Shoals (at the mouth of the Klang), Selangor Highlands and Klang River.⁵ As a political unit, however, Selangor seems to be of relatively recent origin. Thus, Winstedt points out that even in the fifteenth century, the state was not yet a united country but consisted of separate river states.⁶ For example in the Malay Annals (Sejarah Melayu) towns like Klang and Jeram are mentioned separately.

Geographically, Selangor lies between latitude 3 40' and 2 30' north and in 1874 extended from the Bernam River in the north, to the Langat in the south-east, while in the south-west it extended southwards along the coast to include the Lukut⁷ and Sungei Raya valleys. However after British intervention in 1874, these valleys and the whole coastline south of the Sepang River were given to Sungei Ujong (now in the state of Negeri Sembilan) while Selangor received in exchange the whole Langat valley to its southern watershed.⁸ The five rivers of Selangor were (from north to south) the Bernam, the Selangor, the Langat, the Klang and finally the Lukut Rivers.⁹ The state is not as mountainous as one would expect and this is its most notable feature. The highest peaks usually rise 6,000-7,000 feet. In terms of human settlements, the mountains were empty spaces which served

as lines of division.¹⁰ What attracted people during the early history of the state was the coastal flats, the river banks and, to a lesser extent, the undulating land between hills and seas. The rivers especially were the central focus of attention, because of their exceptionally fertile estuaries which were the most significant feature in the human geography of the 1870's in the state.¹¹

Population

Selangor's estimated population in the eighteenth and nineteenth centuries reflects the irregularities and conflicting statistical accounts given by early writers and the Selangor administrators themselves. Prior to 1850, settlement in Selangor was sparse and limited to small isolated Malay kampongs (villages). Most of the people lived along the banks of the major rivers indicated earlier. In this respect, the Langat, the Selangor, the Klang and occasional sites along the coast played an important role in human settlement. Anderson, whose Considerations were printed in 1824, gives some idea of the population of Selangor during this period,¹² despite the presence of a certain inaccuracy in the figures. According to Anderson, Bernam and Lukut each had approximately 1,000 people, Kuala Selangor 400, Klang 1,500, Langat and Jeram 500 each and other small places

about 500 in all.¹³ Almost ten years later, two different versions were given. The first was the census carried out by the penghulus (village headmen) who placed it at 17,097 for the whole state whereas in the second account given out by Newbold, the figures were slightly lower. He estimated 12,000 people for the entire state¹⁴ for the same period. He further added that the population of the state consisted principally of local Malays and aborigines.¹⁵ By 1891, the official census placed it at 26,546.¹⁶ The varying figures quoted above can be attributed to various factors. Probably the most important of these was emigration and immigration from the neighbouring states of Perak and Negeri Sembilan and, more importantly, from overseas, namely China, India and Indonesia. This reached its peak during the boom years of the tin and rubber industry. The second factor which can be considered is the constant warfare and misuse of power among the self-appointed rural chiefs which created fears among the people of the state. At one stage, the population was rapidly decreasing, as Newbold writes;

the country has lapsed into comparative decay and its population is daily decreasing from emigration, the result of the extortions of the Sultan's numerous offspring; who setting all law and justices at defiance, commit piracies, rob, plunder and levy contributions on the wretched inhabitants.¹⁷

Selangor's Original Population

Prior to the arrival of immigrants from Indonesia, India and China into the state of Selangor, the population of the state mainly consisted of Malays and the Bugis.

As far as the Malays are concerned, they were already present in the fifteenth and sixteenth century, particularly when the state was under the sovereignty of the Malaccan Sultans.¹⁸ The influence of Tun Perak for example who was a member of the Malaccan royal family and the Penghulu of Klang possibly contributed to the sizeable numbers of Malaccan Malays migrating into the state. This trend continued from the reign of Sultan Muzaffar Shah (1445-1458) till the reign of Sultan Mahmud Shah (1488-1511).¹⁹ By the time the Portugese conquered Malacca in 1511, the number of Malaccan Malays in the state of Selangor had increased considerably.²⁰

The Bugis population in the state began to take shape in the seventeenth century when Selangor was under the dominion of the Johore rulers (descendents of the Malaccan royal family). Evidence of Bugis presence is also recorded in the Dutch Dagh Register dated 4.8.1681 which describes how large numbers of Bugis from Klang were invloved in the feud between two brothers from the

Kedah royal family. The early Bugis in Selangor were originally from the island of Sulawesi.²¹ When they first settled in the state, they were led by their leader, Daing Lakani.²² Newbold records a tradition that while the Bugis occupied the coast, the right bank of the Klang river was inhabited by Malays and the left by Biduanda Jakuns (an aboriginal tribe).²³

It can be said that the early population of Selangor consisted mainly of Malays, especially from Malacca, the Jakuns and the Bugis. These people lived along the coastal areas and river banks which acted as the best system of communication during this period. It can be assumed that the interior part of the state was still sparsely populated.

(b) The Role of the Bugis

In discussing the historical perspective of Selangor, the influence and the contribution of the Bugis cannot be ignored. Their presence in the state began in the late seventeenth century. The Dutch Dagh Register (Daily Record) indicates that by 1681, there were already large Bugis settlements on the Klang and Selangor estuaries.²⁴ In 1700, the To'Engku of Klang, a relative of the Bendahara of the Sultan of Johore, gave a seal of authority to a Bugis Yamtuan on the Selangor River.²⁵

The Bugis settlements in the state were made by a chief named Daeng Lakani, whose authority afterwards passed by inheritance through the female line to Raja Lumu, son of Daeng Chelak, second Yamtuan Muda of Riau, Indonesia.²⁶

This group of Bugis who were so prominent in Malay history, were led by the five brothers Daeng Prani, Daeng Menambun, Daeng Marewah, Daeng Chelak and Daeng Kamase, sons of Upu Tenribong Daeng Rilaka,, descendent of a queen of Lumu in South Sulawesi, Indonesia.²⁷ Their homeland lay in the south-west corner of the octopus-shaped island of Sulawesi. They lived under hereditary chiefs, and were a vigorous, intelligent and aggressive Malay people. In addition they were skilled seafarers and shrewd traders throughout the Archipelago.²⁸ They had adopted from the Portugese a form of European-type armour and were accomplished muskeeteers. The way of life of the Bugis has been described as little different from piracy and they ravaged the entire Malay coast.²⁹ If this is so, it is not difficult to suggest why Selangor was chosen as their new area of settlement since its coastline faces the main trade route from Europe and India to the Far East and offers opportunities for either legitimate trade or piracy. In addition, the Selangor river valleys and the adjacent mangrove swamps offer hideouts where enemies would find it difficult to penetrate.

Little is known about the Bugis customs and lifestyle other than that they came of Malay stock and were Muslims. Despite being Muslims, the Rulers probably implemented their own local laws imported from their homeland. The question of faraid, baitulmal and zakat appears not to have entered their minds; even if they had thought of implementing them, they might have been deterred by their lack of knowledge on these subjects. Probably however it is likely that even the alims during this period were unable to express their opinions due to the behaviour of the rulers. Islam in the opinion of the Bugis Rulers was merely believing in Allah and performing the daily prayers.³⁰ There will be a further discussion below of the ruler's attitude towards Islam. One suggestion that can be put forward is that if the Bugis were really essentially pirates, the adoption of Islamic land law would have had a low priority in their daily lives.

The royal house of Selangor has a comparatively short history. It was established around the year 1742 by a son of Daeng Chelak, one of the five Bugis brothers mentioned earlier. He called himself Raja Lumu and took the title Sultan Sallehuddin, establishing his capital at Kuala Selangor.³¹ The Sultanate of Selangor forms an integral part of the story of Bugis politics and their rise to power in the Straits of Malacca. The role of the

Bugis in the state of Selangor and throughout the Malay Peninsula can be summarised in the words of Kennedy;

'By the end of the eighteenth century the heyday of the Bugis was over. Their influence represented a passing phase, but one which lasted a considerable time.. and had far reaching results. The Bugis weakened the Malay Sultanate of Johore beyond repair. They helped to weaken Malay authority in Kedah and Perak. They created a new state and dynasty in Selangor, a dynasty from which its present ruler is descended. They weakened Dutch power and influence in Malacca, and possibly prevented its extension in other Malay states. Finally, in Kedah and in Johore, they unconsciously created situations which led to the founding of British Penang and British Singapore.³²

(c) The Sumatrans and Javanese

Perhaps the most important and critical aspect of human migration into the state of Selangor in its early years was the coming of the immigrants from Sumatra and Java in what is now Indonesia. Surprisingly, perhaps, these later arrivals did not influence the nature of land law in the state as much as they did in the state of Negeri Sembilan. They came as early as the beginning of the nineteenth century. It is understood that among the reasons which led them to leave their homeland were population pressure and land shortage.³³ They perceived Malaya at that time as offering the prospect of easily obtainable land and a more prosperous life. In addition the authorities encouraged Malay immigrants to settle in

the state. Rathborn, discussing the situation in the state in about 1883, says;

'the encouragement to settle that were extended for the Malay immigrants from foreign states were evident and they readily³⁴ availed themselves of the advantages given'.

In 'fact as a stimulus and incentive for Malay immigrants to settle in the state during the 1880's, the Selangor State Council decided to grant a three year remission of quit rent dating from 1st January 1884 on all agricultural land throughout the state with the exception of the Kuala Lumpur district.³⁵ This policy also encouraged local Malays from other states to migrate into the state. The policy managed to lure people from as far as the north eastern state of Kelantan. A leader by the name of Che' Mat, a headman of Kelantanese origin who had already settled in the state managed to coerce his people from Kelantan to settle on the newly opened land.³⁶ The attraction lay in his charismatic leadership and the state's willingness to give new settlers economic assistance, while they cleared the land and brought crops to maturity.³⁷

Many migrants came from Java but the majority were of Sumatran origin. The latter were mainly Minangkabaus³⁸ belonging to the Korinchi, Rawa, Mandiling and Batak sub-

groups. These people were strict Muslims in their personal beliefs but also fully committed to their own customs and way of life, especially those customs relating to inheritance of land and property³⁹ (the adat pepateh). Cabaton, the Dutch writer notes:

'for the Minangkabaus, marriage is exogamic and retains the matriarchal form. The husband cultivates the soil for the wife, who owns it as she owns her children and the property of the father passes to the children of his sister and not to those of his wife or brother.'⁴⁰

From this brief description it is clear that their customs in relation to property totally contradict the requirements of the Islamic Law of Inheritance. To the Minangkabaus, the adat, the old customs (Hindu or Animistic) appear to come first even though they often clash with the laws of Islam.⁴¹ With their strong attachment to adat, the consensus among Minangkabaus is summarised by the saying below;

Biar mati anak, jangan mati adat
(Let the child die but not the adat).⁴²

As regards the Javanese, they preferred to migrate to Selangor during the early period because of the abundance of land, and the great economic freedom accorded to immigrants by the British. In Java, unemployment and taxation under Dutch rule were high, and

in addition, poverty was rampant among the Javanese population and the land distribution was unjustly implemented. Benson writes ;

'I noticed it in the Malay archipelago (Java) in as much as the lower class natives (who) owned very little, could buy very little and lived in a very poor way... (and) the people's standard of living is naturally very low.'⁴³

The Javanese contribution to early agricultural development in Selangor was enormous. The following remarks by some British administrators illustrate this point;

'the great feature of the development of the district at present is the marked activity in planting at Klanang, (Kuala Langat district) which may without much exaggeration be described as booming in respect of Javanese'⁴⁴

'in 1930, forced by circumstances, certain Malays and Javanese in the Sabak Bernam Subdistrict took up land in this locality (Pancang Bedena dan Sungai Panjang) for padi⁴⁵ planting. They cleared some 2,000 acres'

'good work has also been carried out by Javanese planters and even some of the local Malays, they have commenced to cultivate their holding in more industrious manner than formerly'⁴⁶

The Javanese, like other groups such as Mandiling, Rawa and Banjaranese tended to move into the Malay states in small family groups and to seek out areas where they could pursue their peasant farming life-style based on the cultivation of rice.⁴⁷

The system of land inheritance adopted by the Javanese tended more towards the system of Adat Kampong as practiced by the local Malays rather than Adat Pepateh as practiced by the Minangkabaus. (There will be a detailed discussion of the concepts of Adat Pepateh and Adat Kampong in the following chapter). Javanese land titles in the district of Kuala Langat indicate that most of them tended to follow the system of faraid in the distribution of land for their heirs although one can suggest that they had to follow the rules stipulated by the Selangor government in adopting such a system. Even in remote villages in Selangor, however, there is no sign that the methods used to distribute shares among the heirs were in contradiction to the Islamic Law of Inheritance.

Although the government of the day placed no restrictions on the entry of Indonesian Malays into the state and indeed actively encouraged them, it also happened that settlers simply migrated into the country without the knowledge of the government land officers.⁴⁸

At the same time local Malays also continued to clear and occupy new lands in the vicinity of their holdings, which lay outside any form of land administration, to a considerable extent.⁴⁹ Thus problems of native land holding began to appear which later led to the introduction of General Land Regulations in the state. All of these Regulations contain similar provisions relating to 'land in the occupation of natives under Malay tenure'.⁵⁰

The location to which the Sumatran immigrants flocked was the Ulu Langat district; later they spread gradually to the neighbouring districts of Sepang and Ulu Selangor. In Ulu Langat the process began with the colonization of river valleys such as the Upper Langat River from 1880 and later spread to the Semenyih and Rinching Valleys.⁵¹ Between 1900 and 1908, Sumatran settlers managed to acquire 325 out of 357 parcels of land alienated in the two mukims of Semenyih and Ulu Semenyih.⁵² The normal method of colonization by the Sumatrans, apart from the 'illegal' settlements mentioned earlier, was for an enterprising headman (Dato Dagang) to obtain the Sultan's permission for the development and settlement of a pre-selected site. After doing so, he then returned to his native village in Sumatra to recruit men to develop the land.⁵³ Land which was suitable for padi, kampong and 'general' cultivation was invariably

chosen.⁵⁴ As regards land ownership, the kampongs were made up of individual holdings and there was no such thing as joint ownership in the cultivation of land. During this period, when trade was not a viable option in the perception of the rural Malays, the size of a holding was regulated by the needs of the family and rarely exceeded two or three acres of padi land and a garden of some ten or twelve coconut trees. Surplus rice was almost unsaleable.⁵⁵ The above situation probably occurred in most rural areas in Selangor.

(d) The Chinese

However, this scene soon changed with the discovery of the rich alluvial tin deposits of the interior foothills. They attracted an increasing number of Chinese immigrants despite the extreme difficulties of land penetration. There was already a Chinese mining settlement at Lukut as early as 1824 and this was followed by others at Kanching in the Selangor valley (1840) and Ampang in the Klang valley (1851).⁵⁶ By 1860, the Chinese in Selangor greatly outnumbered the settled local population and Gullick puts the number of the Chinese miners in the Kuala Lumpur area 'five to ten thousands and increasing fast'.⁵⁷ In fact it was in the Kuala Lumpur district that eighty four per cent of the total numbers in the state were located. It is

interesting to note that as a result of this situation, most of the prime land in the vicinity of Kuala Lumpur came to be monopolised by Chinese individuals, notably by Yap Ah Loy. The new sultan, Abdul Samad, who succeeded to the Selangor Sultanate in 1857 gave great encouragement to the opening up of new settlements such as that at Bukit Arang in the Ulu Langat district.⁵⁸ The Selangor royal family was in close contact with the Chinese during this period because of the revenue that they received from the taxes imposed upon the miners.

Apart from the mining areas, the Chinese to a certain extent also settled along the coastal areas and engaged in the fishing industry, especially in the Kuala Selangor district.

In relation to land alienation for agricultural purposes, Chinese activity in this field was mainly concentrated in the coastal districts of Sepang and Kuala Langat. An example is the engagement of 1,000 or so Chinese, mainly Tiechews, in planting pepper and gambier. By 1889, 11,000 acres of land had been alienated to them in this region and about 4,000 acres were already cleared and planted.⁵⁹ As for the prime land of the Kuala Lumpur district, Middlebrook estimated that two-thirds belonged to the Chinese individual mentioned earlier, Yap Ah Loy, the Kapitan China of Kuala Lumpur.⁶⁰ He was regarded by

the Chinese mining communities as the 'tower and pillar of strength' for the industry.

(e) The Indians

The Indians also came into the state as labourers but in a different field - to work in the embryonic plantation industry. The Indian population, which increased ninefold between 1884 and 1891, consisted principally of Tamil workers.⁶¹ Their aim in migrating to the state was not to settle permanently but to work in the rubber plantations and return to India. Most of them were contract workers employed by European plantation owners. Thus the issue of land alienation as far as the Indians were concerned appeared to be non-existent, as it seems that they were content to earn their living on a temporary basis. However, some European plantation owners had their own schemes of allocating a small piece of land (usually near the estate) for the Indians to venture into their own agriculture. Such an example was the one adopted by a European estate near Morib in the district of Kuala Langat whereby some land was alienated for the benefit of labourers.⁶²

(f) Islam in Early Selangor

The advent of Islam in Selangor can be dated back to the early Malaccan empire in the fifteenth century. The part played by Malacca in the spread of Islam into Selangor cannot be disregarded, as Malacca was the centre of Islamic activities. Trading between Malacca and Selangor has been going on since the beginning of the century mentioned above. D'Eredia, writing in 1613, records that when the Portugese owned Malacca, the yearly output and export of tin from Klang was more than one hundred bharas.⁶³ Indeed, Selangor was the major trading partner with Malacca, being the main tin producing region at that period.

As Islam became the religion of the royal family in Malacca, the latter helped the spread of the religion in two ways; firstly by marriage between members of the royal house of Malacca with other ruling families of Kedah, Kelantan and Indragiri (Sumatra) and secondly, and more importantly, the conquest and the replacement of local rulers by Muslim princes of the Malaccan family.⁶⁴ In Selangor, the role played by Tun Perak (a member of the Malaccan royal family who was influential in Selangor's politics) was particularly notable. As a headman of the community in Klang, he led the Klang contingent in defending Malacca against the Siamese in

the year 1445.⁶⁵ When he returned home to Malacca, he was rewarded with honours and a title by Sultan Muzaffar Shah. Tun Perak left an important mark on the historical relationship between the people of Selangor and Malacca.

As a result of the intensification of trade between the two states, the role of Muslim traders became important as they brought with them their faith which was well-suited to the needs of the Selangor Malays. Islam possessed egalitarian and democratic principles which contrasted favourably with the rigid Hindu caste system which is regarded by Al-Attas⁶⁶ as 'so incompatible with Malay culture.' His opinion is supported by Wertheim who also considers that Islam brought to an end the Hindu caste system of the Malays which had existed prior to the coming of Islam and which had divided the people into different classes.⁶⁷ In a later period, Islam also unified the various Malay tribal groups such as Minangkabaus, Mandeling, Rawa, Bugis and Javanese found in Selangor into a single community. As it had done in ancient Arabia, the religion bridged regional and tribal particularism in the Malay Archipelago by establishing a single ummah.

More important in considering Islam in Selangor is the attitude of the rulers themselves towards Islam. The prominence of rulers in the introduction of Islam is

recorded in both Malay and European accounts. One such example is given in the Malay Annals which describe Sultan Shah as the first in the state of Malacca to be converted and relates that he then 'commanded all the people of Malacca whether of higher or lower degree' to become Muslims.⁶⁸ Since the greater part of Selangor was under the jurisdiction of the Malaccan ruler, it can be supposed that the people of the state obeyed his command. The people at the grassroot level were always loyal to their Sultan and so presumably followed him in accepting Islam. In the Malay Digest⁶⁹ there are found many indications of efforts made to identify the Malay Sultans as Khalifah, substitutes of Allah who governed the country according to his law. Some of the Sultans did make attempts to govern the state in accordance with Islamic justice,⁷⁰ although there were also instances of injustice. In the mid-nineteenth century, some Selangor Sultans seem simply to have used the Islamic religion as a device to ensure their subject's loyalty to them. They were mainly concerned with their regular income and ignored their obligations to Islam and their people. An example can be taken from the behaviour and attitudes of Tengku Ziauddin, the ruler of Klang and Kuala Selangor (1870-1874). He admired European manners and customs to the extent that his tastes included many things contrary to Islam and Malay customs like keeping two large imported dogs and drinking sherry with European guests

while his Malay guests drank syrup.⁷¹ Whatever the behaviour of rulers like Tengku Ziauddin, the Malays during this period still owed allegiance and loyalty to them. It appears that the relationship called for 'absolute loyalty' on the part of the subject regardless of ethical, moral or other considerations.⁷²

There is evidence to suggest that the early Malay Sultans were attracted to two features of Islam related to leadership.⁷³ The first derives from the Persian tradition of kingship, which according to Milner⁷⁴ is a tradition which had been assimilated into medieval Islam. Malay utilization of this tradition was expressed at the most obvious level in, for example the adoption of titles and descriptive formulae from the Persianized Muslim world⁷⁵. Thus Raja Lumu's son took the Arabic title Sultan Sallehuddin as soon as he was installed as the first Sultan of Selangor.

The second feature which was equally attractive to Malay rulers was sufism or mysticism. As Rauf puts it;

'conservatism, belief in superstitions and the practice of saint worship among the Malay rulers and his subjects were some of the features that has been established in their daily lives. Despite this, Islam had succumbed (to mysticism) by the time mass conversion started in the Malay world because the missionaries themselves appears to have been Syayks of Sufis, orders to whom these ideas specially appealed'⁷⁶

Some reservations must be made in discussing the extent to which the political and commercial role of Islam was crucial in influencing the rulers. Professor A.H.Johns⁷⁷, who has written a number of articles on Sufism in South East Asia, has drawn attention to the danger of interpreting Islamization solely in political and commercial terms. The people, especially in the villages, looked upon the rulers as the khalifah of Islam and it is because of this that they (the rulers) are obliged to show good examples of actions that Islam enjoins them to perform, and they had to be knowledgeable in the basics of Islamic teaching in order for their subjects to respect them. This attitude towards the Islamic religion was possibly shared by almost all the rulers in the Malay states during the early period of the Islamization process.

II. (a) Early British Relationships With Selangor

Selangor's relationship with Britain had existed unofficially even before British intervention in 1874, and dated back to the early nineteenth century. Like the Portugese and the Dutch before them, the British were perceived by the Malays simply as representing a new and powerful element whose friendship was desirable.⁷⁸ Initially British policy concentrated mainly upon safeguarding British trading and commercial interests in

the state. Three important treaties were signed between rulers of Selangor and Perak, the British themselves and the Thais, whose purpose was to establish conditions which would be conducive to peaceful trading activities. These treaties will be discussed in the following paragraphs.

(1) Selangor Treaty of 1818 (Cracrofts Commercial Treaty)

The Selangor Treaty or Cracrofts Commercial treaty was signed on the 20th Shawal, 1233 or 22nd August, 1818.⁷⁹ This is a treaty of commercial alliance between the English East India Company and Sultan Ibrahim of Selangor. There were eight Articles in the treaty but Articles 2,3,5 and 8 really show how the British intended to assert their commercial interests in the state. According to Article 2;

'The vessels and merchandise belonging to British subjects, or persons being under the protection of the honourable East India Company shall always enjoy in the ports and dominions subject to His Majesty the Rajah of Salengore all the priveleges and advantages which are now, or may at any time hereafter, be granted to the subjects of the most favoured nations.'⁸⁰

Article 4 is as follows;

'His Majesty of Salengore agrees that he will not renew any obsolete and interrupted

treaties with other nations, public bodies, or individuals, the provisions of which may, in any degree, tend to exclude or obstruct the trade of British subjects, who further shall not be burthened with any impositions or duties not levied on the subjects of other States.⁸¹

Article 5 is as follows;

'His Majesty the Rajah of Salengore further engages, that he will, upon no pretence whatsoever, grant a monopoly of any articles of trade or commodities, the produce of his territories, to any person or persons, European, American or natives of any other country, but that he will allow British subjects to come and buy all sorts of⁸²
merchandise the same as other people.

Article 8 is as follows;

'This Treaty, according to the foregoing Articles, is made for the purpose of promoting the peace and friendship of the two States, and securing the liberty of commerce and navigation between their respective subjects, to the mutual advantage of both, and of it one draft is retained by his Majesty the Rajah of Salengore, and one by Mr. Walter Cracroft, Agent of the Honourable the Governor of Penang. To this is affixed the seal of his Majesty the Rajah of Salengore to ratify it to the Honorable English East India Company, so that no disputes may hereafter arise concerning it,⁸³
but that may be permanent and last forever.'

This Selangor Treaty was essentially concerned with the Dutch threat, but the Thai problem still remained. Another Treaty which was equally important in the context of Selangor's relationship with Britain was the Anderson Treaty of 1825.

(2) Selangor Treaty of 1825 (Anderson's Treaty)

This Treaty which was signed on the 5th Day of Muharram, 1241 or 20th August, 1825 was negotiated by John Anderson, a leader of the Anti-Siamese faction in Penang.⁸⁴ who was sent by Governor Fullerton to procure treaties of friendship with both Perak and Selangor and to settle the outstanding differences between the two rulers. Raja Hassan of Perak appears to have been influenced by the Thais and the British perceived that there was a pro-Siamese party in Perak. On the other hand, Sultan Ibrahim of Selangor had a good deal of sympathy for the Dutch. Anderson hoped to strengthen the position of Selangor and thereby to reduce the influence of both the Dutch and the Thais. Understandably, Anderson's efforts were well received by the ruler of Selangor. Selangor then agreed to fix the River Bernam as the boundary between the two states.⁸⁵ It can be said that Anderson's Treaty of 1825 did at least relieve Selangor from any further Thai pressures and reduced the tension with Perak.

Like the earlier Treaty of 1818, the Anderson Treaty further consolidated the strong foothold that the British already had in trading and commercial activities in the state. The only difference with this Treaty is the smaller number of Articles agreed upon. Having six

Articles, the treaty again showed that the British intended to retain a permanent interest in Selangor. Articles 1 and 6 need to be mentioned. In Article 1, it is stated that;

'It is now agreed between His Majesty the King of Salengore, and Mr. John Anderson, as Agent to the Honorable Robert Fullerton, Governor of Pulo Pinang, to confirm the said Treaty will remain unchanged for ever'.⁸⁶

while in Article 6, it is stated that;

'This agreement...shall continue as long as the revolution of the starry sphere, in which the Sun and Moon perform their motions, shall endure.'⁸⁷

The parties involved in these two treaties adhered to what had been laid down. There seems to have been no breach of the provisions which naturally made the British the victor at the end of the day.

The Selangor treaties of 1818 and 1825 did safeguard the trading rights of the British subjects. However this situation lasted only about twenty five years, because by the middle of the nineteenth century the Sultan's rule was divided into five almost independent territories, namely Lukut, Klang, Langat, Bernam and Selangor proper.⁸⁸ The chiefs and princes controlling these territories were prepared to use force to counter any

attempt to undermine their authority or wealth.⁸⁹ Indeed, the British themselves seem to have bypassed the authority of the Sultans as can be shown by two illustrations. The first is the attitude of Governor Cavanagh in encouraging the rule of Raja Jumaat of Lukut, which prospered through the production and export of tin. Cavanagh's argument was that Raja Jumaat appeared to be 'the most active and enlightened chief in the peninsula' and could provide security and prosperity in a state where British trade might thrive without the need for political intervention.⁹⁰ The second is the relationship between W.H.Read and Raja Abdullah of Klang. Read was the leader of the mercantile community and the most outspoken advocate of British intervention.⁹¹ He was very influential and had longstanding business connections with several Malay states. Together with his partner, Singapore - born Tan Kim Cheng, he played a crucial role in the complex events leading to British intervention in the west coast states in 1874. So close was the Read-Tan relationship with Raja Abdullah that in 1866, the Klang head granted them the tax farms in his district in return for twenty percent of the profits. This arrangement was a severe embarrassment to the British but because of Read and Tan's strong influence in the region, the Crown's government chose to shut their eyes to the matter.

Prior to the nineteenth century, British activity in the Malay Peninsula spread across the Bay of Bengal from its nerve centre in India.⁹² The first focus of their attention was the northern state of Kedah, where they hoped to develop a base from which they could protect their shipping traffic in the Bay. In addition they hoped to check the piracy which was ravaging the coast of the Malay Peninsula. From a logistic point of view, probably, Kedah was not as ideal as the British expected. By the early nineteenth century, they began to move downwards, establishing their power base in what became known as the Straits Settlements. These comprised the islands of Penang and Singapore with the latter serving as the hub of activities. Thus it seems safe to say that at the beginning, British intentions were restricted to guarding trade and Far Eastern shipping.⁹³ However, in the course of time the British were drawn more deeply into internal Malay affairs, particularly in Selangor, Perak and Negeri Sembilan.

(3) The Anglo- Siamese Treaty of 1826

By 1822, an anarchic situation already existed in the states mentioned above. There were internal feuds between rival chiefs, each one of them striving for supreme power. Civil war between rival claimants to the sultanate was also a common phenomenon during this

period. The situation in the Malay states was made worse by the encroachments and claims of Thai Kings upon their rulers, especially those of Kedah, Perak and Kelantan. The Thais had been applying pressures upon these states as a result of which the rulers had to send bunga emas⁹⁴ to Bangkok triennially, as a symbol of their vassal status. The claims of the Kings did not however go unresisted. For instance in 1822, Perak, with the aid of the Sultan of Selangor, managed to throw off the Thai yoke and for the next three years battled with Thailand.⁹⁵ Despite uniting their forces to fight the Thais, typically, the rulers of Selangor and Perak still entertained mutual suspicions and differences. In order to remedy the tense situation, and fearing the threat of Thai control of the tin-rich areas of lower Selangor and Perak, the British reluctantly stepped in. They felt that some kind of agreement was necessary to exclude the Thais from the two states, where prospects for British investment in the tin trade seemed bright.⁹⁶ In 1826, Henry Burney, the Military Secretary in Penang was sent to Bangkok. After a lengthy discussion, the Anglo-Siamese Treaty was signed, under which Thailand agreed not to attack either Selangor or Perak.⁹⁷ A provision was made whereby the Perak ruler could if he wished (without any obligation) send the bunga emas to Bangkok.⁹⁸

As far as Selangor is concerned, it is also of interest to note that prior to the coming of the British during the Napoleonic wars, Holland enjoyed very substantial rights in the state by virtue of the 1786 Treaty.⁹⁹ Although Holland regained her Far Eastern possessions from the British at the congress of Vienna in 1815, commercial circles in the British settlements were alarmed at the prospect of a Dutch resumption of their former monopolies.¹⁰⁰ They felt that if this happened, British trade would be reduced. In order to overcome this fear, in 1818, just before the Dutch returned to Malacca, Governor Bannerman sent W.C.Cracroft to Selangor and Perak to secure friendly treaties (these treaties have been discussed earlier). These treaties did deter the Dutch from re-instituting their monopolies.¹⁰¹

(4) Rationale for British Intervention in Selangor

Many historians¹⁰² tend to agree that British intervention in the Malay states in the nineteenth century was inevitable, although of course their views on the reasons for this differ. Whatever the reasons they give, however, the importance of economic and political factors to the British seems to have been the dominant factor.

Perhaps the most widely accepted views are those put forward by Cowan, Margaret Knowles and Khoo Kay Kim. A brief review of these individuals' views on the subject matter will reveal some similarities in their theories. Cowan and Khoo Kay Kim for instance suggest that increasing anarchy in the Malay states was probably one of the main reasons behind the intervention of the British in the region. This anarchy was itself a result of other factors which will be briefly discussed. Cowan also suggests that the situation posed a threat to the British settlements of Singapore, Penang and Malacca and that an element of humanitarian sentiment entered into the British decision to intervene.¹⁰³ The state of near-civil war which existed in several Malay states created a need for a sound political and economic environment in which British businesses could function smoothly. In Selangor, by 1870, there was already full-scale warfare with Chinese and Malay groups involved on both sides. The rivalries between Tengku Ziauddin (son-in-law of Sultan Abdul Samad) and Raja Mahdi (the Sultan's nephew) dragged two major Chinese groups into their war. The Chinese of the Hakka community in Selangor were divided into two major societies, namely the Hai San and the Ghee Hin. The Kapitan Yap Ah Loy, 'one of the most influential Chinese leaders in Selangor's history who was a member of the Hai San supported Tengku Ziauddin while Kah Yeng Chew who belonged to the Ghee Hin Society supported Raja Mahdi.¹⁰⁴

The rivalries between these two princes posed a threat to the political stability of the state. The British felt uneasy because they had vested interests in most of the mining operations and rubber plantations. Ironically, even at this stage, Sir Harry Ord, the governor of the Straits Settlements from 1867-73 was prevented by his government in London from taking effective steps to restore order in Selangor. The situation took a new twist when, in the absence of Ord, his deputy, Colonel Anson, himself made an attempt to intervene, claiming in particular that even though piracy was not as prevalent as it had been, it was still a menace. For instance one of the most notorious acts of Malay piracy was the Selangor incident of 1871.¹⁰⁵ Anson exceeded the terms of the 1825 Treaty and departed from the Colonial office policy by embarking on a course of gunboat diplomacy.¹⁰⁶ By dispatching a force to bombard the forts of Raja Mahdi, he compelled Sultan Abdul Samad to declare Raja Mahdi and his allies outlaws and to place Tengku Ziauddin in the position of governor of the whole of Selangor.¹⁰⁷ Although Anson's conduct was approved by London, the British government still refused to intervene as it regarded the affair as an isolated incident.

Margaret Knowles also emphasises that the British were trying to safeguard their business interests. She suggests that business speculators played a considerable

role in the British intervention in Selangor, and that for example a coterie of European speculators who were attracted by Chinese tin-mining success wanted to ensure a measure of security for prospective investors in the Selangor Tin Mining Company.¹⁰⁸ J.G.Davidson, a lawyer who was himself closely associated with one side in the Selangor civil war wrote to Lord Kimberly informing him that their client had secured from Tengku Ziauddin a tin-mining concession in Selangor three months earlier.¹⁰⁹ What Davidson wanted to know was whether the British government could protect them from the unsettled atmosphere in the state. In the event that there was no such assurance, he would sanction the use of a private force by his company. Lord Kimberly's reply was a negative one - that British subjects speculated in Selangor at their own risk - and he refused to countenance the employment of a private force in a foreign state.¹¹⁰ Although the request seemed to have been flatly turned down by London, the tin syndicate did not gave up easily, and refused to be intimidated. Officials in London realised the tense situation and this precipitated a change in London's policy of non-intervention. Sir Andrew Clark was given the task of investigating the possibility of extending and firmly establishing some kind of British dominance in the area. Once arrived in the Straits Settlements, he quickly took matters into his own hands, concluding the Pangkor Treaty

with some Perak chiefs on February 1874.¹¹¹ He then quickly turned to the problem of piracy in Selangor. His first concern was to reduce the influence of Malay malcontents, by implementing a reconciliatory relationship between Tengku Ziauddin and Sultan Abdul Samad, who had drifted apart since Anson's intervention. With the assistance of Davidson and Frank Swettenham, of whom both had good relationships with the Selangor royalty, Clark was successful in coming to terms with the Sultan for the provision of a British adviser. According to the Swettenham Journals,¹¹² Clark emphasised that the appointments of British Residents and Assistant Residents in Selangor were made only at the invitation of the Sultan. Whether this claim is justified or not does not really matter, as the intervention had far reaching effects in Selangor, especially in the moulding of the state's land law and administration. By the end of 1874, Clark was ready to appoint a Resident and an Assistant Resident, to which posts Swettenham and Davidson were appointed respectively by early January, 1875.

Perhaps the most critical point is the contents of two Selangor Documents, of which the first is a letter from the Sultan of Selangor to the Governor of the Straits Settlement regarding the appointment of a British Resident. Among other things it states;

'...that I (Sultan Abdul Samad) will enter into an agreement with my friend in order that my friend may collect all the taxes of my country...that I hand over to my friend all arrangements for opening my country and collecting its revenue...' 113

The second is the Proclamation by the Sultan which states, among other things;

'...I shall be exceedingly glad if any one will come to do any useful business for themselves in our country, such as to open tin or gold mines or for the purpose of cultivation or any other profitable business...' 114

In summarising the above discussion, the broad causes which led to the British intervention in Selangor are the importance of the Straits Settlements along the China trade route, the disorders caused by squabbling Malay chiefs and Chinese miners which caused a threat to British investments in the area, the constant agitation of commercial and speculative pressure groups and finally, perhaps, the appearance of the German colossus on the Asian continent.



NOTES TO CHAPTER 1

1 R.O. Winstedt, 'A History of Selangor', JMBRAS, Part 3 (1945), p. 3. See also J.M. Gullick, A History of Selangor, (Singapore, 1960), p. 13.

2 J.M. Gullick, Indigeneous Political Systems of Western Malaya, (London, 1958), p. 4.

3 See Buyong Adil, Sejarah Selangor, p. 1, Winstedt's 'History of Selangor', JMBRAS. Writing on the early history of Selangor has been very limited indeed. Notable writers on the state like Winstedt and Gullick depended entirely on the Malay Annals, but even they could not give an elaborate view on the real meaning of Selangor. In the 70's only Buyong Adil and Abdul Samad have written on the history of Selangor and most of their sources are derived from the two writers mentioned above and the sources they refer to.

4 Gullick, op. cit, loc. cit.

5 Winstedt, op. cit, loc. cit.

6 Ibid.

7 Lukut, historically part of Selangor, was ceded to Negeri Sembilan in 1880 in exchange for Semenyih.

8 Emily Sadka, The Protected Malay States, (Singapore, 1968), p. 1.

9 Selangor Administration Report, 1931, p. 13

10 Ibid.

11 Ibid.

12 Winstedt, op. cit, p. 16.

13 Ibid.

14 See James C. Jackson, 'Population Changes in the state of Selangor, 1850-1891', Journal of Tropical Geography, p. 42.

15 Most of the aborigines in Selangor belong to the Sakai and Jakun tribes.

16 Emily Sadka, op. cit, p. 3.

- 17 Winstedt, op. cit, p. 16.
- 18 Buyong Adil, op. cit, p. 4.
- 19 Ibid.
- 20 Ibid.
- 21 Winstedt, op. cit, loc. cit.
- 22 Ibid.
- 23 Winstedt, op. cit, p. 2.
- 24 John Bastin and Robin Winks, Malaysia: Selected Historical Readings, (Kuala Lumpur, 1966), p. 94. See also Winstedt, p. 3.
- 25 Ibid.
- 26 R.J. Wilkinson, Papers on Malay Subjects, (Kuala Lumpur, 1971), p. 3.
- 27 Abdul Samad, Pesaka Selangor, (Kuala Lumpur, 1971), p. 3. See also Wilkinson, p. 3, Bastin and Winks, p. 94.
- 28 J. Kennedy, A History of Malaya, (London, 1967), p. 13. See also Wilkinson, p. 3.
- 29 For full account of Bugis warfare, see D.J.M. Tate, The Making of Modern South East Asia, (Oxford, 1971), p. 268. See also Bastin, p. 95.
- 30 Bugis rulers were generally fair when it came to performing religious duties. The strong Islamic influence that came from Malacca and to which the Bugis had a close attachment probably contributed to their attitude towards the religion.
- 31 Tate, op. cit, p. 269. For the installation of the first Sultan of Selangor, see also Winstedt, History of Selangor, p. 5, and Gullick, Political Indigeneous System, pp. 14-15.
- 32 Kennedy, op. cit, p. 66.
- 33 J.C. Jackson, op. cit, loc. cit.
- 34 Ibid.
- 35 Selangor Government Gazette of 1893.

- 36 Gullick, op. cit. p. 32.
- 37 Ibid.
- 38 Minangkabau was a kingdom in the Padang Highlands of Sumatra, noted for its matrilineal social system.
- 39 E.M. Enriquez, Malaya, An Account of its People, Flora and Fauna, (Plymouth, 1927), p. 103.
- 40 Ibid.
- 41 Ibid.
- 42 For other popular sayings, see Nordin Selat, Sistem Sosial Adat Pepateh, (Kuala Lumpur, 1976).
- 43 Benson, In the East as quoted by Khazim Mohd. Tamrin, Orang Jawa DiSelangor, Penghijrahan dan Penempatan, (Kuala Lumpur, 1984), p. 36.
- 44 'Kuala Lumpur Monthly Report', September 1896, Selangor Government Gazette No. 30, p. 758 as quoted by Khazim.
- 45 Report on the Progress of Schemes for the Improvement and Extension of rice cultivation, p. 10 as quoted by Khazim.
- 46 Selangor Administration Report 1895, p. 9.
- 47 Robert Aitken, Colin H. Leigh and others, Development and Environment in Peninsular Malaysia, (Singapore, 1982), p. 10.
- 48 David Wong. Tenure and Land dealings in the Malay States, (Singapore, 1975), p. 72.
- 49 Ibid.
- 50 Ibid.
- 51 David Radcliffe, 'The peopling of the Ulu Langat District', in Indonesia, No. 8. pp. 155-182.
- 52 P.K. Voon, 'Spatial Patterns of Agriculture in Semeniyh', Journal of Tropical Geography, p. 71.
- 53 Zaharah Hj. Mahmud, 'The Period and Nature of Traditional Settlement in Malay Peninsula', JMBRAS, (1973), p. 81-113.

- 54 Voon, op. cit, p. 72.
- 55 R. Senfleben, Background to Agriculture Policy in Malaysia, (Hamburg, 1978), p. 48.
- 56 Wilkinson, op. cit, p. 3.
- 57 Jackson, op. cit, p. 53.
- 58 Wong Lin Ken, The Malaya Tin Industry to 1914, (Arizona, 1965), p. 23
- 59 Selangor Annual Report, 1889, p. 18.
- 60 S.M. Middlebrook, 'Yap Ah Loy, 1837-1885', JRAS, Vol. 24 Pt. 2, 1951, p. 23
- 61 Jackson, op. cit, p. 46.
- 62 Malayan Agricultural Journal, Department of Agriculture, Vol. XXVI, No. 11, (Kuala Lumpur, 1938), p. 453.
- 63 Winstedt, op. cit, p. 5.
One bhara is equal to approximately 400lbs.
- 64 J. Kennedy, A History of Malaya - 1400-1959, (London, 1962), p. 17. See also Buyong Adil, pp. 4-5.
- 65 Kennedy, op. cit, p. 11.
- 66 S.N. Al-Attas, Preliminary Statement on general Theory of the Islamization of Malay Archipelago, (Kuala Lumpur, 1969), p. 26.
- 67 As quoted by Ismail Hamid, The Malay Islamic Hikayat, (Bangi, 1983), p. 26. Wertheim's view was also presented by Cesar Adib Majul in his paper entitled 'Theories on the Introduction and Expansion of Islam in Malaysia' at the Conference of Historians of Asia in Manila, Phillippines, 1962, pp. 383-384.
- 68 A.C. Milner, 'Islam and Malay Kingship', in Readings of Islam in South East Asia, (Singapore, 1985), p. 27.
- 69 This is a set of written laws known in the Malay language as Risalat Hukum Kanun. For further discussion, See Liaw Yock Fang, Undang-Undang Melaka, (Leiden, 1975).

70 Thus we find Sultan Mansur Shah of Malacca advising his son, Sultan Alauddin Shah, to rule the state according to the command of Allah and be just. See Ismail Hamid, Islamic Hikayat for further discussion.

71 Emily Sadka, op. cit, p. 27. This description was given by Mohammad Ibrahim, son of Abdullah bin Abdul Kadir, the author of Hikayat Abdullah. He travelled to Selangor during this period with the Straits Auditor General, Irving, as his interpreter.

72 Judith Nagata, The Reflowering of Malaysian Islam, (Vancouver, 1984), p. 4.

73 Milner, op. cit, p. 27.

74 Ibid.

75 Ibid.

76 M.A.Rauf, A Brief History of Islam with Special Reference to Malaya, (Kuala Lumpur, 1964), p. 88.

77 A.H. Johns, 'Islam in South East Asia', in Readings on Islam in South East Asia, (Singapore, 1985), p. 21.

78 Moshe Yegar, Islam and Islamic Institutions in British Malaya, (Jerusalem, 1979), p. 23.

79 J.V. Allen and others, A Collection of Treaties and other Documents Affecting the States of Malaysia 1761-1963, (London, 1981), p. 434.

80 Ibid.

81 Allen, op. cit, p. 437. The writer's underlining.

82 Ibid.

83 Ibid.

84 Op. cit, p. 439.

85 Ibid.

86 Ibid.

87 Ibid.

88 Barbara Watson and Leonard Andaya, A History of Malaysia, (London, 1984), p. 117.

89 C.M. Turnbull, The Straits Settlement 1826-67, (London, 1972), pp. 301-302. See also Khoo Kay Kim, The Western Malay States 1850-1873, (Kuala Lumpur, 1972), p. 141.

90 Watson, op. cit, p. 146.

91 Yegar, op. cit loc. cit.

92 Ibid.

93 Ibid.

94 Literal meaning "Gold flowers" but in reality a tree adorned with gold, silver and other precious ornaments sent regularly as tribute from vassal states to the Thai court.

95 Yegar, op. cit, loc. cit.

96 Watson, op. cit, p. 117.

97 Ibid.

98 Ibid.

99 J.V. Allen, op. cit, p. 434.

100 Ibid.

101 Ibid.

102 Sadka, The Protected Malay States, p. 1-37 and Kennedy, p. 145-163.

103 E. Chow, 'The Reasons for British Intervention in Malaya: Review and Consideration, JSEAH, Vol. 6, 1965, p. 81.

104 Allen, op. cit, p. 445.

105 Ibid

106 For further discussion on the incident, see L.A. Mills, British Malaya 1827-1874, (Kuala Lumpur, 1966), p. 115.

107 Allen, op. cit, p. 446.

108 Chow, op. cit, p. 85.

109 Ibid.

110 Ibid.

111 For further discussion on the Pangkor Treaty, see Khoo Kay Kim, The Western Malay States, Chapter 3.

112 Burns and C.D. Cowan, Sir Frank Swettenham's Malayan Journal 1874-1876, (Kuala Lumpur, 1975), p. 340.

113 Allen, op. cit, p. 448.

114 Op. cit, p. 449.

CHAPTER 2LAND AND AGRICULTURAL POLICIESIN BRITISH SELANGORI. (a) Malay Customary Laws

Before discussing early Malay customary law, we shall describe briefly the tribal laws of the aborigines of Malaysia. The three main tribes are the Negritos, Sakais and Jakuns (the last two tribes are fairly widespread in Selangor) of whom the Jakuns are considered to be the most developed. Normally in any aboriginal society, the application of law is not harsh. The most serious crimes are those which most hurt tribal interests.¹ The Negrito tribe is headed by a chief called Pelima, who has absolute authority over the administration of justice. An offence committed by a member of the tribe will be punished by a fine ranging from M\$5 for the theft of a blowpipe to M\$40 for the abduction of a married woman or murder.² In the case of the Sakai, there was no individual property. Among them lands are communally possessed and cultivated by the tribe, and the produce is shared by all members.³ With reference to inheritance, the descendents of the deceased come first, then the ascendants followed by the collateral branches of the family.⁴ In the absence of

heirs, the house and clearing are abandoned. Where virgin land is concerned, it comes under the authority of the penghulus, who will determine the boundaries of every plot that a particular member can occupy.⁵ From this description, it can be said that the Sakai land tenure is a text-book example of the tribal right of disposal of land. It appears that the penghulu is at the apex of the tribe and has enormous authority. The other members of the tribe have only a derivative right to dispose of certain land to which the right is hereditary, but which returns to the tribe when there are no heirs.⁶ As for the Jakuns, the law is administered by a Batin (equivalent to a Sakai penghulu). His work is made easier by the assistance of the tribal elders who have knowledge of customs and laws. The penalty for most offences is a fine which can be paid in the form of either money or sixty Chinese saucers, which no Jakun is likely to possess. In certain instances, death is also the penalty for incorrigible thieves and adulterers; execution is by impaling, drowning or exposure to the sun.⁷ These methods seem to indicate Hindu influence. Muslim influence seems to have a bearing on the rules of property and succession insofar as it is believed that in some smaller tribes among the Jakuns, it is based on the ratio two (for the men) to one (for women).⁸

From the brief discussion of these aboriginal laws, it can be said that as in other primitive societies, all laws are based on the principle of tribal interest and self-preservation. There are some elements of Islamic and Hindu influence especially when it comes on the division of property, where the male predominates over the female.

Most scholars⁹ are agreed that the historical sources of land law in Malaysia are based upon judicial decisions in the late nineteenth century and after. These decisions are based mainly on English Law (the Deeds System), the Adat Temenggong, the so-called 'customary land tenure' and the Torrens System which had been brought by Maxwell and will be discussed later. It should also be noted that even before the arrival of the East India Company in the Malay Peninsula, the Malay States were sovereign States under the Malay Sultans who administered their own little respective domains under their own legal system.¹⁰

Most Western trained legal scholars, including Hooker, seem to label the early land law in the Malay States as 'customary law' or 'customary land tenure'.¹¹ We cannot simply deduce that it was customary law because the concept itself is a harmonious blend of Islamic Law and local custom. It can be said that whatever rules of Islamic Law relating to land tenure have regulated the

daily lives of the Malays over the centuries since the Sultan of Malacca embraced Islam have finally seeped into the Malay psyche and became an integral indistinguishable part of the Malay way of life vis-a-vis the adat.¹² A critical evaluation made by Judith Sihombing¹³ indicates that under the customary land tenure prevailing in Malacca at the time of the arrival of the English, land belonged to the Ruler. He had the discretion to grant the right of possession (not ownership) of the land to his subjects.¹⁴ Powers of the Ruler included the right of succession and the rights of disposal, through sale, pledge and transfer. Such alienation by the Ruler was however subject to the payment of a tithe (one-tenth) to the Ruler by his subject while the land remained under cultivation.¹⁵ The description by Sihombing of the rules governing customary land tenure in Malacca is in fact a reflection of the concept of ownership of land in Islam as stipulated in the Qur'an, Sūrat al-Mā'idah (5) : 17 whereby the state, Ulū'l-Amr, is entrusted with the responsibility to ensure that the land which has been alienated will remain alienated as long as it shall remain beneficial to the owner and the ummah.¹⁶ The Ruler can always repossess the land in the event that the owner has failed to cultivate it.

There is also another element of Islamic thinking in the early land law which justifies describing it as in

part an Islamic land law. This can be seen in the contents of some of the laws which have provisions on the concept of menghidupkan tanah mati or the revival of dead land.¹⁷ This has a relevance to the principle of Ihyā'-al-Mawāt.¹⁸

Perhaps the best example that can justify the claim that Islamic Land Law always had a role in the Malay States is the decision made by an English Judge in the famous Selangor case Ramah v Laton¹⁹. This case established that Islamic law is the law of the land, not foreign law, and is in fact part of the local law of which local courts should take judicial notice.²⁰ Unfortunately this decision did not influence some of the English-trained local judiciary, even to the present day, especially in their judgements on Muslims who have brought their disputes to court for settlement. This is despite the fact that the case had given the right direction more than half a century ago.²¹

The Malay customary law which is known as adat denotes several different things in the Malaysian context. It can be customary behaviour, or proper behaviour and courtesy. However as far as this thesis is concerned, it will be used to mean those Malay customs which have legal consequences. In Islamic nomenclature 'ādah is generally also referred to as 'urf.²² An

in depth study of adat can be a difficult task because it is still largely unwritten.²³ R.J. Wilkinson, analysing the concept of adat in the Malay context, sums up the situation as follows;

'...of all branches of Malay research, the study of jurisprudence is the one that presents the greatest difficulties. Malay laws were never committed to writing;... varied in each state, they did not harmonise with the doctrines of Islam, they were often expressed in metaphors or proverbs, that seem to baffle interpretation...'²⁴

The development of Malay adat laws owed much to the contributions made by the Malaccan Sultans and the emigrants from Sumatra. By the fourteenth century, Indian culture had already put its stamp on the Malayan way of life, introducing Indian religion, laws and language in the region, and Malacca was no exception. It also replaced native tribal organization with government by a rajah.²⁵ When Islam subsequently found its way into the Malay Peninsula, leading to the conversion of the first Sultan of Malacca to Islam, Malay adat law seems also to have assimilated itself to Islam. Adat is so entrenched in Malay society that there is no dichotomy between the two. As Mackeen puts it;

'custom was not only assimilated into Islamic law but its binding nature was fittingly acknowledged in the maxim: custom ranks as stipulation.'²⁶

The implementation of adat in Malay society differs from place to place - being the living law at a certain time in a certain place; the nature of the adat is elastic and adaptable to social needs and as such is not suitable for codification. Thus certain laws in the Malay Digest need not to be taken seriously as representing the adat law in a certain state. Such decisions as are made by the tribal chiefs and local institutions probably give a more realistic picture of the living adat law.

Initially when Malacca became a Muslim centre, Islamic law was adopted in religious matters only, but it gradually gained ground.²⁷ For evidence of Islamic penetration in the early Malay laws, one need only look at such compilations of the various early Malay digests as the Undang-Undang Melaka (Malacca Laws) A.D. 1523, the Pahang Digest of 1596, the Kedah Digest of 1650, the Ninety Nine Laws of Perak of 1765 and the Johore Digest of 1789.²⁸ Of the various digests mentioned above, the Undang-Undang Melaka has contributed most towards the law in Selangor. In this Digest some of the contents appear to conform to Islamic law, particularly as regards matrimonial and commercial matters. In Van Ronkel's edition of the Malaccan Digest, there are four sections on matrimonial laws.²⁹ There are the qualifications and appointment of a wali or guardian for a woman on her marriage, witnesses, on the physical disabilities that

render a marriage void and finally on divorce, the religious qualifications of a Muslim bride and the marriage of a free man or woman with a slave.³⁰ In commercial matters, a manifestation of Islamic law can be found in the prohibition of interest when an individual engages in trading activities. Although the importance of Islamic law is emphasised in the Digest, it seems that in certain instances, adat is put above the Islamic law. At one point the Digest asks Allah and his Prophet S.A.W. for pardon because many of the adat laws which have to be followed violate Muslim law. The reason given is that obedience to traditional custom helps to preserve peace in the society.³¹

From Selangor's perspective, the most important sections of the Malacca Digest are those which describe the Selangor Slave Laws and those which refer to the term چاكارا charian laki bini (property which is jointly acquired by a husband and wife during their marriage).³² The Selangor State Laws are regarded as the first law published in the state and are mainly concerned with the rules and regulations laid down for slaves residing in Selangor.³³ The charian laki bini (or chakara, a short term used by the Bugis) derived its origin and influence, possibly, from Selangor. This term is a very important element in the legal terminology of Malaysian civil and shariah courts, where inheritance

cases are concerned, up to the present day. Charian laki bini as found in the Digest has been described as follows;

'(it) lays down that at lawful marriage the guardians should enquire as to the separate property of the man and woman so that on divorce, it may be returned to the owner, while property acquired during marriage is divided equally.'

'If a separate property has vanished during coverture, and the joint property acquired during marriage, (chakara) is large, then the separate property is made good, and the residue is the joint property: and losses too are divided.'³⁴

The concept of charian laki bini appears to have been practiced by the Bugis in Selangor, and this suggests that in the early history of Selangor there were already existed laws pertaining to the division of property. However, it must be agreed that these laws do not follow the Islamic law of inheritance, since the term charian laki bini itself means;

'...the residue divided between the widows and the children, boys and girls getting equal shares...'³⁵

Whereas in the Holy Qur'an on inheritance, it is stated;

'In what your wives leave, Your share is half,
If they leave no child, Ye get a fourth;

after payment of legacies and debts.
 In what ye leave, Their share is a fourth,
 If ye leave no child, They get an eighth;
 after payment of legacies and debts.'³⁶

The Digests which have been discussed appears to have common general characteristics. Hooker gives a good account of these;

- (1) No clear distinction is drawn between the various branches of the law, civil, criminal or constitutional.
- (2) Many of the digests devote a large amount of space to penalties for various crimes to the detriment of other topics.
- (3) The law of real property is not dealt with in any detail although a description of the acquisition of proprietary rights is usually to be found.
- (4) Rules relating to bethrotal and marriage are generally rules of Islamic law, mainly Shafi'i law.
- (5) Provisions relating to cattle tresspass are common.
- (6) Provisions relating to slavery are common.
- (7) Finally, it can be said that the degree of Muslim penetration seems to be in direct proportion to the type and severity of penalty imposed for criminal offences. In other words, many texts retain non-Islamic penalties of public law, thus suggesting that the degree of Islamic influence varied from district to district in Malaya. Against this, it can be argued

that on the contrary, Islamic influence was strong, ³⁷ but the texts themselves were not altered.

(b) The Concept of Adat Pepateh, Adat Temenggong and Adat Kampong

Having discussed the general nature of the adat and the contributions made by the digests to Malay customary law, more concrete examples of the three most widely practiced adat in Malaysia will be given. These are adat pepateh, adat temenggong and adat kampong.

In the period before the Malay states of Selangor, Perak, Pahang and Negeri Sembilan came under British influence, the laws of the Malays relating to property, as noted above, were in origin based on the tribal custom or adat. This custom continued to govern the ownership and devolution of property.³⁸ Although the Malay rulers were Muslims, as far as the division of property is concerned, they followed the old Malay customs and it appears that their subjects tended to follow their example.

In the earlier part of this chapter, it was briefly indicated that both adat pepateh and adat temenggong were initially brought into the state from Malacca and Sumatra. As for the latter place, there were two routes

taken by the emigrant Minangkabaus in bringing these two adats. The adat pepateh came from the Minangkabau highlands in Central Sumatra whereas the adat temenggong came from the other route of emigration, that is through Palembang in south Sumatra which was a part-Hinduized kingdom.³⁹ As a result, the adat temenggong manifests certain Hindu elements.

(1) Adat Pepateh

The term adat pepateh has a fairly well defined meaning as far as law is concerned. It means a body of rules which is based on the existence of a set of unilineal descent groups which are organized on a matrilineal and matrilineal basis.⁴⁰ Most of these provisions have been handed down from generation to generation and are understood by all. In adat pepateh, when an individual and his family has worked and acquired a piece of land, the land is meant to be kept within the tribe to which he belongs. Two classifications of land under this adat pepateh can be described. They are harta pesaka or ancestral property and harta charian or acquired property. With regard to ancestral land or tanah pesaka, this will include all land which has been inherited along a matrilineal line; and this particular land will be tied in inheritance descending through the female heir and cannot be alienated by its present holder

except for certain customary purposes.⁴¹ In the event that the alienation of the land is allowed, the rightful heirs to the land are given an option to purchase the land at a fair price in an order of priority according to the closeness of matrilineal kinship.⁴² If on the other hand, the heir decides to decline the offer, then the option will be extended to all members of the tribe.⁴³ The category of 'acquired land', generally includes all land which is acquired by a person other than by way of inheritance. This includes the purchasing and appropriation of new land. However 'acquired land', once devolved to female heirs, becomes 'ancestral land'.⁴⁴

In addition, under this adat the holder of 'acquired land' can dispose of his land without any restrictions but has no power to make testamentary disposition. In the event of the death of its holder, the 'acquired land' must devolve according to this adat. Further differentiation of land classification in adat pepateh such as charian bujang (the property acquired by one party prior to a marriage), harta dapatan (the personal property of a married woman) and harta pembawa (the personal estate of a married man, that is, the property brought by him to his wife's clan into which he passes on marriage) are common phenomena found in Minangkabau society.⁴⁵ The principle of separate property of a husband and wife is thus recognized by this adat. From

the principle that the matriarchal tribe is the social unit, four cardinal principles of distribution can be deduced;

- (1) All property is vested in the tribe, not in the individual.
- (2) Acquired property, once inherited, becomes ancestral.
- (3) All ancestral property is vested in the female members of the tribe; and
- (4) All ancestral property is strictly entailed in tail female.⁴⁶

The workings of adat pepateh, especially in Negeri Sembilan and some parts of Malacca have presented many problems to legal and land administrators, especially to District Officers, as it conflicts so radically with the Islamic Law of Inheritance.

(2) Adat Temenggong/Adat Kampong

In discussing the concept of adat temenggong, it must first of all be pointed out that adat kampong or village custom cannot be wholly separated from it. This is because most of the characteristics of adat kampong are similar to those of adat temenggong. In Selangor, most villagers still practice both adats, especially in

relation to land inheritance. In the perception of the villagers adat temenggong and adat kampong are synonymous. This is probably because both adats profess the importance of patrilineal descendents. This seems to the villagers, to a certain extent, to follow the Islamic Law of Inheritance. Having said this, however, it is dangerous to assume that adat kampong is a manifestation of adat temenggong. This is because adat kampong only came onto the rural scene after adat temenggong had gained ground earlier. So it is safe to say that adat kampong simply resembles some aspects of adat temenggong especially as regards the division of property through the patrilineal descendents. Unlike adat pepateh it can be said that there is no comprehensive study of adat temenggong and that this has yet to be written.⁴⁷ In fact as Hooker pointed out;

'The term (referring to adat temenggong) does not refer to a recognizable or certain body of law. Its lack of precise reference is not helped by the various meanings which have been attributed to it over a long period and this will undoubtedly give some difficulty.'⁴⁸

Despite the vagueness of the term adat temenggong, writers on Malay adat seems to share the same view that there is a strong possibility that this adat came from the same cradle as that of adat pepateh but changed its character under Hindu influence (such as the notions of

caste and male dominance).⁴⁹ Much of adat temenggong does have a Hindu influence; as Windstedt observed, 'it is mixed with relics of Hindu Law and overlaid with Muslim Law'.⁵⁰ If an analysis is made of Hindu Law, it can be said that as far as inheritance is concerned, it follows a patriarchal family law. In this law, the husband is the head of the family and the woman is subject to her father when she is a child, to her husband when she is married and to her son in old age. Property descends to the sons and then to the agnates upon condition that they give the mother a son's portion and their sisters an adequate share of property.⁵¹ Most of these elements found in adat temenggong, especially as regards male domination, do in a way resemble the Islamic Law of Inheritance. Adat temenggong has survived in Palembang and Malacca because of these places' strong patriarchal and autocratic environment. Adat pepateh declined into a constantly changing mass of institutions and regulations which were administered by despotic rulers and officials who advocated the implementation of adat temenggong. The closeness in character of adat temenggong to Islamic Law has led to some different views on this issue. Hooker seems to deny the suggestions made by Moubary that adat temenggong has now assimilated itself almost entirely to Muhammadan law.⁵² He argues that the above assertion is in no way valid for at least

two reasons, both of which are connected with inheritance;

- (1) There are many transmissions which involve women as trustees;
- (2) It is extremely common to find titles in the name of a man and a woman in equal shares, that is to say, in the highly important field of land inheritance and ownership, there is absence of Islamic principles in favour of some other form of land holding.⁵³

Hooker's argument is valid certainly in the present day land administration in most districts in Selangor. The practice of adat temenggong in the state is unofficially evenly spread. There seems to be no heavy concentration in a particular district. The best method of assessing to what extent this adat has been implemented in the districts of Selangor is probably to refer to the registration of land titles held by the villagers.

Another adat which appears to be closely associated with adat temenggong is adat kampong. This adat is widely practiced among villagers as the term suggests. In addition to this adat, the Malays themselves generally use such terms as adat mukim or pakat.⁵⁴ The significance of these various terms is a strictly local matter, although they all fall under the general heading

of adat kampong. The most striking feature of adat kampong is its tendency to conform to the Islamic Law of Inheritance. The concept of consent and consensus (ijma) among the waris is widely practiced in land distribution. In most cases, questions of property and inheritance are seldom the subject of litigation between a woman and her children. Matters are settled by perdamaian (or peaceful means) and usually there is a tendency for the woman, especially if she is a widow, to receive more than her share under Islamic Law of Inheritance. In the vast majority of Malay families in rural areas, one-eighth of the estate, which is the share allowed for a widow under Islamic Law is not sufficient to provide her with subsistence. Thus the matter is regulated by adat kampong rather than the Islamic Law of Inheritance. The fact that the Islamic Law allows distribution of the estate of a deceased person to be settled by consent and consensus of the heirs has enabled many arrangements which are in reality the application of adat kampong to pass as distribution according to the Islamic Law of Inheritance.⁵⁵ In the event of a dispute, the courts and the District Officer (in some states, the Collector of Land Revenue) will normally settle it by the implementation of Islamic Law.

Having discussed the various adats, it should be apparent that adat plays an important role in the context

of land administration in Selangor. In most cases two out of the three adat discussed are to a certain extent practiced in the villages. However, it must be remembered that the nature and intensity of their application depends mostly upon locality. Despite some of its unIslamic characteristics which have a bearing on the implementation of Islamic Law, it has been able to cement relationships among the villagers in their land dealings. There have been attempts to blend and intertwine the Malay adat with the Islamic Law. Despite the existence of the conflicts between the two, these have been glossed over by alleging that both systems are in fact directed to the same end. A Malay saying states;

'Our customary law bids us,
Remove what is evil,
And give prominence to what is good;
The word of our religious law,
Bids us do good,
And forbids our doing evil.'⁵⁶

It remains to be seen whether the above saying can be accepted by the Malays of today who are becoming more and more conscious of a need to uphold the strict Islamic Law of Inheritance in the country. In most parts of Malaysia, the adat has been integrated in Muslim law which later is applied 'as modified by Malay custom'. The only exceptions are adat pepateh which today is mainly practiced in the matrilineal areas of Negeri Sembilan and

some parts of Malacca. Here the rules relating to property and inheritance are without doubt in conflict with Muslim Law.

(c) The Malay Indigeneous System of Land Tenure

The Peninsular Malays had long been practicing a subsistence economy which is normally founded on padi cultivation.⁵⁷ Two methods were utilised in carrying out cultivation. The first is primitive shifting cultivation and the second is sedentary agriculture.⁵⁸ The primitive shifting cultivation is known as huma or ladang. In this system hill-land is cleared in patches for the cultivation of a variety of seasonal crops and vegetables including bananas, sugar cane, pumpkins, gourds and chillies.⁵⁹ After reaping what has been sown, the villagers will abandon the land and move elsewhere to a new site. The abandoned land is left to revert to secondary forest.⁶⁰ Sedentary agriculture is typically practiced by Malay peasant agriculturalists. It is undertaken in the lowland areas for wet-padi and the planting of fruit trees. Lands cultivated with wet-padi are called sawah or bendang (padi fields - most of this type of land is located in the districts of Kuala Selangor and Sabak Bernam, the rice bowl districts of Selangor). Lands planted with fruit trees are usually found in the surroundings of dwelling houses and are

called kampong (villages).⁶¹ Stretches of sawah in combination with kampong would make up a model of a traditional Malay settlement,⁶² generally found along the river banks in the earlier period. In Selangor, Malay settlements also include rubber, coffee, coconut and oil palm smallholdings. This is the pattern of the rural settlements in most districts in Selangor at the present day.

Customary land dealings among the Malays were highly developed even before the British intervention in 1874. They were of three kinds, (a) pulang belanja or return of expenses, (b) gadai or letting and (c) sewa or security transactions. In pulang belanja, a particular piece of cleared or cultivated piece of land is transferred by sale. The name in Malay itself however indicates that the transaction was not quite a sale but rather a take-over to compensate the efforts made by the original cultivator for his labour in clearing the land.⁶³ In addition, it applies to any crops or house he has cultivated or erected thereon.⁶⁴ The second term used to describe Malay customary land dealing is gadai or 'letting' which consists of an agreement by the cultivator to allow another person to cultivate his land in return for a share in the produce. This kind of dealing is still quite dominant in certain rural areas of Selangor (especially in the districts of Kuala Langat and Sepang; most of the

crops involved are oil palm, rubber, coconut and coffee. Thirdly, under the heading of sewa or 'security transactions', two forms of dealings can be distinguished. The first is an arrangement whereby a cultivator-borrower makes himself a 'tenant' of his creditor. The latter becomes entitled, similarly to the situation in 'letting', to a share in the produce as his 'interest on the loan'. Then there is the transaction commonly known as jual janji (usually translated conditional sale),⁶⁵ in normal circumstances involving the transfer of the borrowers' land to the lender. It is anticipated that the latter will take over the occupation of the land and whatever profits are made from the land will be his as the remuneration for the loan. Sadly, the concept of jual janji lost its place despite its long usage when the newly-introduced Torrens System made registration mandatory. Salleh Buang noted that jual janji has subsequently been treated in its operation as a contract only.⁶⁶ The perception of the courts is that this type of Malay transaction is purely adat and therefore they totally ignore it, and fail to consider whether this concept is not in fact the local version of Bai' Bil Wafa (a sale with an option to repurchase). If it were treated as Bai' Bil Wafa, this would probably dispel the fears of the majority of Malays who despite practicing it, theoretically object to it on the grounds that it collaborates with riba, which is the economic

basis on which the modern system of charge or mortgage functions. Indeed the implementation of Bai` Bil Wafa, or sale with an option to repurchase, would be the most viable solution to the problem.

(d) The status of the Malay Ruler in Relation to Land

In Winstedt's writings on the Malays he hypothesises that monarchical government was superimposed on the Malay agricultural communities by Hindu rulers from India.⁶⁷ It is well known that the Malay political system of the sultanate came with the Malaccan kingdom (1400-1511 A.D.)⁶⁸ There is no evidence however to suggest that this resulted in the introduction of a tenurial system of relationship between the ruler and his subject.⁶⁹ On the other hand, the political power of the rulers inevitably gave individual cultivators less freedom from interference by the ruling class. This is because although in most states in the Malay Peninsula the Sultan was at the apex of its political system, the country was in fact divided up and ruled by powerful local territorial chiefs. Selangor is a typical example of this situation, in which district chiefs were more powerful than the Sultan himself. At times he did not know what was going on in a particular district. The Sultan as regards his actual political power and financial

resources was virtually just another territorial chief. An example of this is the discovery of tin in a particular district. A local chief would jealously regard any land which was discovered to be rich in tin ore within his territory as 'his', and it can be assumed that he would certainly claim or usurp any such land from his own people.⁷⁰ In addition, there is the question of dues, especially from Chinese miners, which the chiefs tended to collect without accounting to the Sultan. They had enormous personal authority in their district, which being local, was more direct and well-informed in matters of occupation and reallocation of land. Despite this situation, the Sultan still had some power over any claim of proprietary rights or ownership in respect of land under the jurisdiction of his subordinate local chiefs.⁷¹ In fact the sultanate political system provided a strong check upon the territorial chiefs and encouraged them to keep an eye on one another and report their actions to the Sultan. In this way the local chiefs were committed to a formal acknowledgment of the Sultan's sovereignty over the whole state.⁷² Thus, it can be said that the territorial sovereignty of a Malay ruler during this period never came close to the transformation into superior proprietary ownership of land which came about soon after the British intervention in 1874.

II. British Land and Agricultural Policies

The coming of the British into Selangor and the increasing demand for land caused by the rapid development of the rubber and tin industries resulted in a revision of the land tenure system in the state. As mentioned earlier, after Selangor came under British protection in 1874, the Sultan issued a proclamation that land in the state could be taken up by any person for mining, agricultural and other purposes.⁷³ The proclamation was obscure as far as the nature and terms of land-holding were concerned except that agricultural land would be given free of 'cost' or 'payment' for the first three years of its acquisition.⁷⁴ It was assumed by the British that these particulars would be left to their discretion. Frank Swettenham, the acting British Resident expressed the view that;

'...the greatest possible encouragement should be given to everyone who is willing to take up land cultivation and the necessary taxes, whether on the land or its produce, or on minerals, should be made as light as possible. The Sultan's Proclamation of September, 1874 should be sufficient to do this and especially would it be so, if it were known that after the expiration of the three years free occupation, grants in fee would be given for all cleared lands on paying a small price per acre.'⁷⁵

From the above quotation, it seems clear that the British officers were contemplating a new form of private

ownership, to be something like an estate in fee simple under English Law.⁷⁶ However, as will be seen later, this was not to be the case, since for a number of reasons, such as the suitability of local conditions, a leasehold form of ownership was introduced.

As far as the Sultan was concerned, in theory all land in the state of Selangor was still his property. However, the British Resident had the final say in the alienation of land, and with the approval of the Chief Secretary he could impose such special conditions as he thought fit. In addition he could delegate certain defined powers to District Officers (or Collectors of Land Revenue in some Malay states) for the occupation of state land.⁷⁷ The usurpation of this power by the British from the Sultan, which was mirrored in other Malay states, had considerable significance. It showed how eager the British administration was to expand the rubber acreage and the tin mining areas. Critics such as Wong and Ladejinsky⁷⁸ have argued that the British were putting self-interest first rather than helping the local population, especially the Malays, to develop their land. Wong for example states that 'the colonial economic policy of developing both tin-mining and export agricultural industries in the Malay states necessitated the introduction of a new system of private land ownership that would suit and foster capitalist or

commercial exploitation of land resources'.⁷⁹ He further adds that 'the making and introduction of a new system of private land ownership in these states was directed not only to serving the requirements of the Chinese enterprises but also towards the attraction of European investment.'⁸⁰ Eventually, he added, all the land laws would be legislated according to the Western or indeed the English conception of private ownership.⁸¹ Even though these criticisms have some element of truth, there seems no reason to suggest that the British are wholly to blame in the matter. In fact as can be seen later, they did try to maintain and safeguard the interest of the Malays by such means as the Malay Reservation Enactment which protects Malay land from being purchased by non-Muslims. Although there were discrepancies in the carrying out of this Enactment, one has to agree that there was some effort and interest shown by them as far as native land was concerned. On the question of Islamic land law and its implementation in the state at this stage, it can be said that the British were more concerned with adopting their own laws and restructuring and setting up the Western judicial system in the state, (this will be discussed in greater detail in the following pages). Probably the best explanation for the unwillingness of the British to implement faraid, wakaf, baitulmal and zakat was that under the Pangkor Treaty, among other things it was laid down;

'...that the Sultan receive and provide a suitable residence for a British officer to be called Resident who shall be accredited to his Court, and whose advice must be asked and acted upon on all questions other than those touching Malay Religion and Custom...' ⁸²

It may be that the British felt that Islamic matters should be left to the Sultans and Malay chiefs to settle. However, the British failed to realise that they too would eventually have to deal with the land question in the context of Islamic Law in the state.

Selangor's total land area when the British first intervened in the state was estimated to be 3,200 square miles or 2,048,000 acres. ⁸³ The greater part of the state consisted of alluvial plain with vast areas of land which was suitable for both mining and agriculture. In fact land was abundant but the population was sparse.

If we analyse the first sixty years of British rule (1875-1935) in the state, it becomes evident that most of the prime lands in the state were dominated by other nationalities than the Malays. This can be illustrated by an examination of the Selangor Administration Reports for those years. In 1890, according to the report, in the six districts, namely Kuala Lumpur, Klang, Ulu Langat, Kuala Langat, Kuala Selangor and Ulu Selangor, thousands of acres of land were being alienated to foreigners. ⁸⁴ The

total area alienated in Klang alone was about 25,146 acres in 1891.⁸⁵ Fresh land alienated to foreigners annually appears to be alarming, as indicated by the tables included in Appendix A.

Apparently the very extensive and rapid development of land in the state made the British realise that there was a need for legislation as a method of controlling and administering this. There was no proper system of registration of land, and as a result, the state could not trace individuals liable for the payment of rent and other dues, a fact which had an impact on the state's revenue. The situation was further hampered by the absence of a proper survey of the lands granted or leased. Discrepancies frequently occurred between the areas described in titles and those in the actual occupation of land holders.⁸⁶

Selangor thus took the first step towards trying to establish a more efficient system of land administration in the state. On the 27th September 1877, the State Council passed the Rule for the Disposal of Land in Selangor.⁸⁷ The assumption was that with this decision, it had set down the basic model for the new system of land tenure. The main feature of the rules was their provision for leasehold grants by the Selangor government in all cases.⁸⁸ Land was broadly classified into lands

(a) for agricultural purposes (b) for building and (c) for special purposes.⁸⁹ With the exception of government lands, land which was destined for agricultural purposes was to be leased for a term of 999 years. The lease for this type of land was subject to the payment of a premium and an annual quit rent.

By 1882, Selangor had replaced its existing land regulations with its first General Land Regulation.⁹⁰ The rules further strengthened the concept of the 999 year lease, i.e. a kind of lease for an indefinite period. This subsequently became a form of grant which survives in the Malay states to the present time although the duration of the lease has been shortened in some states including Selangor.⁹¹ It was well received by the plantation investors because of the simplicity of paying the required fee.⁹² The unique element in the Regulation is that it provided the places mentioned above with lots of prescribed size and shape with roadway reservations.⁹³ It gave enormous advantages to investors because each lot which was made available was to be auctioned to the highest bidder.⁹⁴

This Land Regulation made no exception where mining land was concerned. The British right from the beginning took a great interest in introducing laws and regulations for the encouragement of the mining industry.⁹⁵ When

Selangor replaced the 1882 Regulations with the Selangor Land Code of 1891, there was a section specially devoted to mining laws. Section 72 provided that mining leases should be 'to the effect of' a statutorily prescribed Form.⁹⁶ It clearly envisaged that a mining lease should be in the nature of a lease of the land for mining purposes; normally it provided for the grant of 21 year leases.⁹⁷

(a) Native Holdings

Initially, when these land regulations were established, no effort was made to distinguish between the various forms of native land tenure. This is especially so as regards native lands which were held prior to intervention and which because of their location in remote parts of the state and the difficulties they posed to administration were of less immediate interest to the British. Only those new peasant holdings which emerged near mining areas, around towns or along communication lines were brought under the leasehold system. Later on, to deal with the native land problem, some rules were provided in the General Regulations; among other things these included the compulsory registration of such land. When this was done the occupant would be given a certificate 'confirming the

title'. This established the fact that an agreement had been reached between the individual and the state government.

As a matter of expediency, the aim of the state government was to convert all existing Malay holdings to leasehold holdings. The British were convinced that the Malay customs relating to land tenure were in a way recognised in the de facto occupation according to the custom and that this was the basis for the issuing of a formal lease in the future.⁹⁸ It was their hope that eventually the customary system would be totally displaced by the leasehold system. The move was not welcomed by the villagers and was met with strong opposition.⁹⁹ They knew that with the eradiction of their customary system of land tenure, the government would finally have the upper hand, especially in revenue collection. Thus the whole question of land administration in respect of native holdings became a stalemate and led to great confusion. The situation dragged on up to the 1890's.¹⁰⁰

(b) The Work of W.E.Maxwell

Amidst the confusion, W.E. Maxwell, who was appointed as the British Resident in Selangor, set himself the task of putting things right. There is no

doubt about Maxwell's abilities. In fact British land administration in Selangor owed much to his efforts and ideas. It can be said that without Maxwell's influence in the state land administration, the situation would have been comparable to a ship without a rudder.

Maxwell gained his native land experience during the years 1883-86 while in Malacca, where he seems to have been the key man behind a series of land reforms in that state where similar problems of native holdings existed.¹⁰¹ Maxwell argued that;

'the system in Selangor possessed all the elements of confusion which had caused such trouble in the land offices of the Straits Settlements: want of defined subdivisions; the issue of permits for imperfectly described and undemarcated areas in anticipation of survey; a rent-roll compiled from duplicate titles in order of issue irrespective of locality'.¹⁰²

His concern also included the manner in which the land tenure system worked at the district level. He felt that the root of many of the problems lay here. The first step to ironing out the problem was his insistence that District Officers should compile what was called a 'territorial rent roll',¹⁰³ which divided the state into districts and each district into smaller units known as mukim (parish). This would be followed by a rough demarcation and a recording, in a sequential manner in

each mukim, of all lands which were under actual occupation.¹⁰⁴ Consequently, a rent roll was compiled from mukim to mukim which would show the locality of every occupied plot by references to its 'survey serial number', its approximate area, the rent assesment due in respect thereof and the name of the occupier who was liable to pay the rent.¹⁰⁵

It was Maxwell's view that the re-organisation of the revenue and land administration in the state required a radical change in land tenure policy. As a result of his efforts, he was confident that 'it would be much simpler and easier to develop and perpetuate the native system of tenure.'¹⁰⁶ Armed with this practical and rational approach, Maxwell drafted a set of land regulations which were subsequently passed as the Selangor Land Code of 1891.¹⁰⁷

(c) Selangor Land Code, 1891

Despite the policy of non-interference in Malay Customs and Religion adopted by the British, where land administration was concerned Maxwell tried to inject some Islamic influence in his legislation. Under the Selangor Land Code, the importance of the preservation of customary land was taken into consideration. Thus, alongside land held under the leasehold system, there was

to be a new class of private lands called 'customary land'.¹⁰⁸ Under the code, customary land could be held by a 'Muhammadan' either under a grant, lease or agreement from the government or as a 'customary land holder'.¹⁰⁹ In addition, a customary land holder was deemed to have permanent transmissible and transferable right of occupation subject to certain conditions. It was assumed that with these rights, Malay landholders could transfer their land according to either faraid or adat. There were no clear-cut rules regarding this. Maxwell realised that as far as the distribution of property of a deceased person in Selangor was concerned, this was actually governed either by Islamic Law or by national custom or partly by one and partly by the other.¹¹⁰ He cited the example of real property being subject to customary law and personal property to Islamic law. Indeed the Islamic Law of Inheritance was implemented in Malay agreements at that time in apportioning the estate of an intestate. However, when it came to the major question of division of land or property, Malays tended to follow the national customary law (Hukum Adat) rather than that of the Qur'an (Hukum Sharak).

Another remarkable achievement claimed by Maxwell was the introduction of the Mukim Register. The Mukim Register was briefly discussed earlier. However because of its importance a closer analysis of its working is

desirable. The Register served as the official record of preliminary settlement of holdings under native occupation.¹¹¹ The lands were roughly measured and demarcated with permanent boundary marks, so that the actual location and the physical marks of the boundaries were more conclusive.¹¹² In order to provide an effective check, the Regulation gave powers to the District Officer such that in case of dispute he could direct a survey to be made of lands involved. Registration of the land in question was completed only when the District Officer certified that the land had been duly entered in the Mukim Register and he signed and dated the entry.¹¹³

The Mukim Register introduced by Maxwell was of great assistance in the later years of British land administration in the state and remains so to the present day. Indirectly it helped to identify the problems encountered by the villagers, especially when it came to questions of faraid and wakaf, and it helped the penghulus and the District Officer to identify the size and the location of the land. At this point, it must be said that by 1900, under the new Court Enactment, the Kathi and Penghulu Courts were established.¹¹⁴ Thus, the Penghulu, whose job was to render general assistance to the District Officer, had an increased role in the land administration, especially in explaining to the

villagers the mysteries of any law that had been passed.¹¹⁵ By acting as minor magistrates and go-betweens in the settlement of land disputes at mukim level, they proved extremely useful in the local administration of justice. With the erection of balai or small community halls in most villages they were able to carry out their duties more effectively. In most instances when determining the question of inheritance by the villagers they came to the district office to refer the matter to the District Officer with the assistance of the Mukim Register. This practice is still in operation to the present day.

No one can deny Maxwell's merit. He introduced a better and more efficient system of revenue and land administration. What he did was simply to adopt two standards of administration - a more sophisticated one for land under the leasehold system and a summary one for native holdings. He was highly acclaimed by some. Lim Teck Gee regards him as a 'man of the highest personal integrity...perhaps the greatest and most under-rated administrator of British Malaya.'¹¹⁶ This rosy view of Maxwell does not necessarily mean that his actions did not have any harmful effects upon the Malay population. One critical point he made later concerning customary

land has perhaps tarnished his achievement in the perception of local ulama. In his annual report, Maxwell argues that;

'There was a need to throw open the customary tenure for land to all nationalities instead of confining it to Mohammedans. By the repeal of the Mohammedan clauses, the customary title became marketable, and its value was in consequence greatly enhanced.'¹¹⁷

(d) The Concept of Malay Land Reservation

One of the most distinct and vital contributions by British land administrators in Selangor and in the other Malay States was the introduction of the Malay Reservation Enactment. It had far-reaching effects as far as the need for the preservation of Malay land was concerned. When the First Malay Reservation Enactment was passed at the request of the Malay Rulers in 1913, its intention was that special gazetted areas should be reserved for Malays¹¹⁸ only and that non-Malays could not hold any rights to land in these areas,¹¹⁹ since there was a need to protect Malay settlers from others who were willing to compete for land in the spate of land speculation. The speculative environment was sparked off by the scramble for land during the rubber boom of the early 1910s and thus there was a necessity for suitable areas in the state to be delineated for cultivation and

ownership for the Malay population.¹²⁰ The wording of the Enactment leans more towards protecting kampong lands as opposed to what are called 'kebuns'. Kampong lands are land planted with some fruit trees and vegetable or rice and containing houses. This type of land as indicated earlier has been handed from generation to generation of Malays.¹²¹ On the other hand the kebun lands are land used for small scale commercial cultivation (normally crops such as coffee, coconuts and seasonal Malaysian fruits).

Despite giving full attention to the creation of Malay land, British officials still managed to safeguard the interests of non-Malay landholders. They adopted a policy whereby 'land parcels owned by non-Malays prior to the inclusion into a Malay Reservation are not affected by the Enactments; similarly land which was the subject of a charge prior to the declaration by which the land was included in the Malay Reservation land may be sold to the chargee.'¹²²

The creation of this Enactment was not without certain difficulties. One particular problem remained unsolved, which was whether the reservation policy should only be applied to ancestral land or Malay land in general. Ambiguous views were given by the Legal Adviser himself in presenting the policy. In the 'Objects and

Reasons' statements prepared by Hastings Rhodes (the Legal Adviser to the Federated Malay States in 1912), it is stated that the intention of the government was not to prevent Malays from buying, selling or leasing lands, or to deny the Malays the opportunity of developing new land for profit but rather to prevent the Malays from 'prodigally and improvidently' disposing of land that was their 'birthright and inheritance'.¹²³ On the other hand in his report to the Secretary of State in Britain he stated that the purpose of the Enactment was to prevent 'the passing of Malay landholdings into the possession of foreigners'.¹²⁴ The law itself merely stipulated that 'any alienated land or state land' could be included in a Malay reservation.¹²⁵

As regards the issue of land value, by limiting the pool of potential owners to those least able to afford land, the Enactment depressed the value by about fifty per cent.¹²⁶ This situation was reported by the District Officer of Klang who also reported that many who might otherwise accept the 'Malayan Race' condition anticipated later selling their land to finance a pilgrimage to Mecca, and were unwilling to accept a restriction that would decrease its value.¹²⁷

On the surface, it might seem that legally non-Malays were barred from owning land reserved for Malays.

However, there were still loopholes by which the restriction could be evaded. Non-Malays could still obtain a legal and financial interest in reservation land. They did this by leasing it from the Malay landholders, since the law permitted leases for a period of three years.¹²⁸ They also made use of mortgages, powers of attorney, promissory notes and, after the 1926 Land Code came into effect, the legal concepts of caveats and liens.¹²⁹ The simplest method used to arrange for sequential three-year leases was the employment of power of attorney documents, a method which is widespread to the present day. It is very easy to obtain such a document and in most cases, the villagers, who had little knowledge of legal terminology, readily put their signatures to such documents. Local lawyers¹³⁰ were more interested in making a quick profit than in advising the villagers of the consequences of signing the document, and most villagers were afraid to ask advice from the penghulus or those working in the district office before putting their signatures to such a document. This timidity and lethargy created many problems for the village people when they discovered that these documents could be used in the lower courts. The power of attorney document gives legal power to a particular individual since by authorizing the attorney 'to substitute and appoint from time to time one or more attorneys', it gives 'the right to pass on to any man or

any race a body of privileges which can only be described as de facto ownership.¹³¹ On most occasions, the transfer of land ownership from a Malay to a non-Malay occurred in this particular fashion. By the late 1920's, many British officials felt that non-Malay possession of reservation land had reached serious proportions. The District Officer of Kuala Lumpur reported that there was a growing population of Chinese and Indians living as tenants under unregistered agreements and similar trends were noted in Klang and Ulu Langat districts.¹³² An important study was carried out in the reservation areas of the Semenyih and Ulu Semenyih Mukims in the district of Ulu Langat¹³³ which suggested that land sales between the years 1916-50 had reached a very high percentage indeed.¹³⁴ A total of 1,577 separate transactions was recorded in the land office giving an average of 2.5 sales per lot or an average number of 30 sales per annum.¹³⁵ Three consequences ensued as a result of these changes in ownership.

Firstly, it could be deduced that owners and their families settled in their holdings were being dislodged and would inevitably have to move away, either to another site in the locality out of the mukim entirely.¹³⁶ Secondly, in the event that the displaced owners had a house in the kampong and agricultural holdings elsewhere in the Reservation, then the sale of the latter might not

entail residential dislocation but an increase in the incidence of landlessness could occur.¹³⁷ Finally, in most cases, the dispossessed owners could be allowed to remain on the holdings as tenants of the new /or absentee owner-landlords.¹³⁸

Perhaps the most important element identified by the study is the problem of multiple joint ownership. In many cases, it seems that the number of owners was not influenced by the transfer of ownership but by transmission, a process resulting from the application of faraid.¹³⁹ This feature is evident especially among Malay landowner where Islamic law on mushā' property, that is, undivided shares of a jointly owned property, estate or donated gift has been applied. It can be seen that the division of the estate of a deceased Muslim (qisma) and mushā' property led to the widespread existence of multiple ownership (joint ownership), thus contributing towards low productivity and fragmentation of most Malay agricultural land.¹⁴⁰

The year 1930, which saw a world depression inevitably brought policy changes in the economy of British Malaya and Malay Land Reservation was no exception. The depression drastically reduced the ability of Malay smallholders to repay whatever debts they had contracted and strengthened the case of those arguing

against the prevailing system of rural credit.¹⁴¹ The situation was equally bad as far as mortgages were concerned. Although a survey conducted by the government in 1931 indicated that less than four per cent of the holdings in Malay Reservation Land in the Malay States were mortgaged securing debts of about M\$3,000,000, it was estimated that an additional M\$2,000,000 had been borrowed by smallholders without mortgages having been executed.¹⁴² In Jeram in the district of Kuala Selangor for example it was discovered that in one Malay Reservation area, there was a high rate of unregistered indebtedness. Although the records showed only ten mortgages securing loans amounting to M\$6,735, detailed inquiry revealed that sixty one families (which is half the population of the area surveyed) owed an additional sum of M\$14,300 or an average of M\$234 per family which was not secured by mortgages and did not appear in government records.¹⁴³ Considering the fact that the net annual income of a rural Malay family planting rice in the 1920's and 1930's was about M\$120, this represented a colossal burden of debt.¹⁴⁴

This gloomy picture, for which the Malay population were not entirely to blame, worried British officials. The consensus among them was that there was a need for credit facilities to be severed entirely and that the interest of the smallholders would be best served if the

government were to eliminate mortgages, attachments, liens and all other devices which gave money lenders, especially the chettians (Indian licensed money lenders), the legal and financial edge over the smallholders. There was an urgent need for the 1913 Enactment to be revised, which was subsequently expressed by the Acting High Commissioner of the Federated Malay States, Andrew Caldecott;

'The Enactment will cause no hardship except to those who have deliberately attempted to exploit the Malay against the plain intention of the law. Such people in my view deserve little consideration and I would state my emphatic opinion that it was most essential for the Federated Malay States Government to take the most drastic measures to put a stop to the open abuses of the 1913 Enactment.'

Thus in 1933, the Malay Reservation Enactment was amended and revised. The gist of the Enactment prohibits further mortgages and charges by non-Malays;

'No State land included within a Malay Reservation shall be sold, leased or otherwise disposed to any person not being a Malay'; and
'No Malay holding included within a M.R. shall be transferred, charged, leased or otherwise disposed to any person not being a Malay, and no memorandum shall be capable of registration in any Land Office or Registry of Titles.'

In practical terms this meant that powers of attorney in favour of non-Malays were not to be accepted, Malay holdings in Reservations could not be placed in trusts in favour of non-Malays and grants of probate or letters of administration that vested Malay Reservation land in a non-Malay executor or administrator were made illegal.¹⁴⁷ In addition to these measures, it was stipulated that when any provisions of the Land Code, Civil Procedure Code or Powers of Attorney Enactment conflicted with the Malay Reservations Enactment, the latter would prevail.¹⁴⁸ The 1933 Malay reservations Enactment largely eradicated the devices adopted by non-Malays to establish legally recognized interests in reservation land. However, the greedy attitudes of non-Malays to reservation land remained unchanged. Matters increasingly came to be arranged in what might be termed 'extra-legal' ways which were neither sanctioned nor forbidden by law.¹⁴⁹ Unscrupulous money lenders, especially the chettians and some 'illegal financial institutions', continued to adopt illegal methods and devices to abuse the law. The following methods below are practiced to the present day in Selangor and other Malaysian states.

- (1) The money-lender will retain the grant (issue document of title) for such land as surety for a loan together with a

letter of debt (I.O.U.) which is signed by the landowner. In case of non-payment the chettiar threatens to burn the grant.¹⁵⁰

(2) The money lender may engage another Malay who is employed or may act as an agent (kaki) in any mortgage deal. This too is an offence and appropriate action against such a Malay pawn can be taken.¹⁵¹

(3) The borrower changes the title to the name of a third party, a Malay, and on non-payment of the loan, the land is sold to another Malay at a huge profit and the money is returned to the lender. This practice is not totally illegal although the original land owner is usually cheated, because such emergency sales fetch very low prices on the market.¹⁵²

The above three methods of evading the Enactment are difficult to detect. The situation is made worse by the reluctance of the Malays to come forward and approach the relevant government authorities for help, especially those working in the district offices. Land officers for their part also find it difficult to carry out investigations without knowing the names of the offenders. In most cases the victims tend to be asabas (rightful inheritors) who knew nothing of the transactions since the holder of the title (the eldest in the family) lives in the villages whereas the rest of the rightful heirs earn their living in the towns and cities.

NOTES TO CHAPTER 2

1 Buss Tjen, 'Malay Law' in The American Journal of Comparative Law, Vol. VII, 1958. (killing and abduction are some examples).

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

9 See S.K. Das, The Torrens System in Malaya, Malayan Law Journal, (Singapore, 1963), Chapter I to IV: David Wong's, Land Tenure, Chapter 2; Judith Sihombing, National Land Code, A Commentary, Malayan Law Journal, (Singapore, 1981),; W.E. Maxwell, The Law and Customs of the Malays with Reference to the Tenure of Land (1884), 13 in JMBRAS, 75; M.B. Hooker, Islam in Southeast Asia.

10 Salleh Buang, 'The Law of Property in Malaysia: Prospects of Islamisation', Law Seminar, International Islamic University, Petaling Jaya, July 26-29, 1986, p. 3.

11 Ibid.

12 Abdul Majeed Mackeen, 'Islamic Law and Customary Law', Contemporary Islamic Legal Organisations in Malaysia, (New Haven, 1969), p. 11.

13 Judith Sihombing, The National Land Code, (Kuala Lumpur, 1981), p. 50.

14 Salleh Buang, op. cit. loc. cit.

15 Ibid.

16 Q. Surat Al-Ma'idah (5)

17 See Liaw Yock Fang, Undang-Undang Melaka and David Wong, Land Tenure, p. 10.

18 See Sunan Abu Daud, Kitab Al-Kharaj, (English Translation) Vol. II, Ashraf (Lahore, 1984), p. 874 as quoted by Salleh Buang, p. 36.

19 The Judge presiding the case was Chief Justice Thorne.

20 Salleh Buang, op. cit, p. 4,

21 Ibid.

22 Moshe Yegar, Islam and Islamic Institutions in British Malaya, (Jerusalem, 1979), p. 119.

23 R.J. Wilkinson, Papers on Malay Subjects, (Kuala Lumpur, 1972), p. 12.

24 Ibid.

25 There is a consensus among historians like Khoo Kay Kim. A.C. Milner and Kennedy concerning the strong influence of Indian religion.

26 Abdul Majeed Mackeen, Contemporary Islamic Legal Organizations in Malaya, (New Haven, 1969), p. 11.

27 Ibid.

28 Muslim Law is very evident in all digests as is clear from some paragraphs which seem to be copied from Muslim Law Books, imposing such fines as camels. Often in order to show their knowledge of Islamic Law, the compilers of the Digest mentioned Muslim penalties next to customary ones.

29 R.O. Winstedt, 'A Malay Legal Miscellany', JMBRAS, Vol XXV, Pt. 1, 1952, p. 11.

30 Ibid.

31 Ibid.

32 Winstedt, op. cit. loc. cit.

33 Ibid.

34 Ibid.

35 Ibid.

36 Q. Sūrat al-Nisā', 12.

- 37 M.B. Hooker, 'A Note on the Malayan Legal Digests', JMBRAS, Vol. 41, Part 1, 1968, p. 164.
- 38 Ahmad Ibrahim, 'Islam and Customary Law in Malaysia', Malaya Law Journal, p. 6.
- 39 Buss Tjen, op. cit, p. 258.
- 40 M.B. Hooker, 'Readings in Malay Adat Laws', Journal of Comparative Law, Vol. 16, 1968, p. 422.
- 41 Hooker gives a very good account of land inheritance in the context of adat pepateh especially in his books on Adat Laws in Modern Malaya, (Kuala Lumpur, 1972), Readings in Malay Adat Laws, (Singapore, 1971) and The Personal Laws of Malaysia, (Kuala Lumpur 1976). see also the 2nd edition by Nordin Selat, Sistem Sosial Adat Pepateh, (Kuala Lumpur, 1982).
- 42 David Wong, op. cit. loc. cit.
- 43 Ibid.
- 44 Ibid.
- 45 For further discussion of the various terms used, see Hooker in The Personal Laws of Malaysia, Chapter 3 on 'Malay Adat Laws'.
- 46 Ahmad Ibrahim, op. cit, p. 256.
- 47 Buss Tjen, op. cit, p. 259.
- 48 Hooker, op. cit, p. 88.
- 49 Hooker, Buss Tjen and Wilkinson seems to have the same opinion.
- 50 Winstedt, op cit, p. 12.
- 51 Buss Tjen, op. cit, p. 261.
- 52 Hooker, The Personal Law, p. 90.
- 53 Ibid.
- 54 Adat mukim is similar to adat kampong, while pakat means 'collaboration'.
- 55 Ahmad Ibrahim, op. cit, p. 63.
- 56 Op. cit, p. 72.

57 see Ooi Jin Bee, Land, People and Economy in Malaya, (London, 1963), pp. 103-106 and R. Winstedt, The Malays, A Cultural History, (London, 1961).

58 David Wong, op. cit, p. 9.

59 Ibid.

60 Such a shifting cultivation is practiced by the aborigines in Malaysia today.

61 Ibid.

62 Ibid.

63 Ibid.

64 Ibid.

65 Salleh Buang, op. cit, p. 5.

66 Ibid.

67 Winstedt, The Malays, A Cultural History, (revised, Singapore, 1981), p. 63.

68 Ibid.

69 Ibid.

70 Ibid.

71 Ibid.

72 Op. cit, p. 16.

73 David Wong, op. cit, p. 65.

74 Ibid.

75 Op. cit, p. 66.

76 Ibid.

77 W. Isaac Ladjensky, 'Agricultural Policies of British Malaya', Foreign Agriculture, Vol. I, 1941, p. 159.

78 Ibid.

79 David Wong, op. cit, p. 30.

80 Ibid.

- 81 Ibid.
- 82 Yegar, op. cit, p. 28.
- 83 Selangor Administration Report, 1931, p. 13.
- 84 Ibid.
- 85 Ibid.
- 86 B. L. Chua, 'Land Registration in Singapore and the Federation of Malaya', University of Malaya Review, 1958, p. 318.
- 87 Prior to formal law-making by the State Council, Proclamations relating to land matters were in some states issued by the Malay Rulers. Also in the initial period of British protection, some rudimentary land regulations were introduced in the form of official notice or rules issued and published in the name of the British Resident, see David Wong, p. 66.
- 88 Ibid.
- 89 Ibid.
- 90 Selangor Order in Council, October, 1882.
- 91 David Wong, op. cit, p. 70.
- 92 Ibid.
- 93 Ibid.
- 94 Ibid.
- 95 Wong Lin Ken, op. cit, p. 53.
- 96 Ibid.
- 97 Ibid.
- 98 Op. cit, p. 71.
- 99 Ibid.
- 100 Op. cit, p. 72.
- 101 Ibid.
- 102 For a detailed account of land problems in Malacca, see Maxwell, 'The Law and Customs of the Malays

with Special Reference to the Tenure of Land', JMBRAS (1884) 13: p. 147.

103 Orders given to a District Officer for the preparation of a Register of holdings and Territorial Rent Roll, published in Selangor Government Gazette dated 25th July, 1890, Notification No. 153.

104 David Wong, op. cit, p. 74.

105 Ibid.

106 Ibid.

107 Selangor Order in Council, No. 111 of 1891.

108 David Wong, op. cit, p. 75.

109 Ibid.

110 Maxwell, 'Law and Customs of the Malays', p. 92.

111 David Wong, op. cit, p. 117.

112 Ibid.

113 Ibid.

114 Lim Yoon Lim, 'The Administration of Justice in the Federated Malay States', Ph. D Thesis, University of London, 1960, p. 34.

115 Ibid.

116 Lim Teck Gee, The Origins of a Colonial Land Policy: The Development of Perak Land Legislation, 1874-98, (Kuala Lumpur, 1968), p. 2.

117 Selangor Administration Report, 1891.

118 Under the Federated Malay States Reservation Enactment: 'Malay' means a person belonging to any Malayan race who habitually speaks the Malay language, or any Malayan language, and professes the Muslim religion. Under this definition, non-Malays who converted to Islam and follow the Malay customs are excluded from land ownership within the Enactment.

119 Ibid.

120 R. Senfleben, Background to Agriculture Policy in Malaysia, (Hamburg, 1980), p. 26.

121 The background to the creation of Malay Reservation is outlined in Voon Phin-Keong's 'Malay Reservation and Landownership in Selangor', Modern Asian Studies, 1967, 1967, pp. 509-523. See also Ahmad Nazri Abdullah in Melayu dan Tanah, (Kuala Lumpur, 1984) who gave a detailed account of the Malay Land Reservation.

122 Senfleben, op. cit, p. 29.

123 Paul Kratoska, 'Ends that We Cannot Forsee', Journal of Southeast Asian Studies, Vol. 14, 1983, p. 154.

124 Op. cit, loc cit.

125 Ibid.

126 Quoted from Minute, District Officer of Klang to the Selangor Resident, 24th February, 1920 by Kratoska, p. 155.

127 Ibid.

128 Ibid.

129 Ibid.

130 Nearly all are Chinese, Eurasian or Indian lawyers.

131 Kratoska, op. cit, p. 156.

132 Op. cit, p. 157.

133 Voon Phin-Keong, 'Rural Land Ownership and Development in the Malay Reservations', SEAS, 1977, p. 504.

134 Ibid.

135 Ibid.

136 Voon, op. cit, p. 505.

137 Ibid.

138 Ibid.

139 Voon, op. cit, p. 507.

140 Senfleben, op. cit, p. 45.

141 Kratoska, op. cit, p. 161.

142 Ibid.

143 The detailed data was drawn from the Jeram Malay Reservation Memorandum by A.T. Newbold, District Officer for Kuala Selangor, 1931. See Kratoska as above.

144 Kratoska, op. cit, loc cit.

145 Op. cit, p. 164.

146 Federated Malay States Malay Reservation Enactment, Cap. 142 (1933) Sect. 7 & 8.

147 Kratoska, op. cit, p. 163.

148 Ibid.

149 Ibid.

150 Senfleben, op. cit, p. 29.

151 Ibid.

152 Ibid.

CHAPTER 3

LAND ADMINISTRATION:

LEGAL AND RELIGIOUS INSTITUTIONS

In any discussion of land administration in the context of the legal and religious institutions of the state of Selangor, the introduction of the Administration of Muslim Law Enactment of 1952 by the British must be regarded as a milestone in Islamic land administration in the state. Selangor can be proud of being the first state in the history of the country to have such an enactment. This enactment led the creation of the State Religious Council (Majlis Agama Islam Selangor) and the State Religious Department (Jabatan Agama Islam Selangor), and what is more important, to the setting up of shariah courts in most of the districts in the state. The functioning of these institutions will form the main nucleus of the discussion in this chapter. In addition, the introduction of the Small Estate Act of 1955 gave some prominence to the role of three equally important individuals at the district level who form part of the administrative faraid and wakaf machinery. These are the District Officer, Small Estate Officer and the penghulu or village headman.

The key roles at the grassroots level in Selangor are those of the District Officer, and also the kathi and the shariah courts, which play an integral part in the day to day regulation of land problems, especially with reference to faraid, wakaf and baitulmal.

(a) The District Officer.

The need of the British for an effective administration in Selangor led to the creation of the District Officer, or, in some other states, the Collector of Land Revenue. While the heart of their administration in the state was the Resident, the British found that their policy could not filter down to the population at large without the existence of the District Officer. The institution of the District Officer then was an attempt to solve the problem of communication by providing a set of officers who could be responsible for the government of a district, coordinating departments actively, and reporting directly to headquarters on local needs and problems.¹ In 1882, Selangor had three District Officers, one each in Klang, Kuala Langat and Kuala Selangor. By 1895, Ulu Langat and Ulu Selangor had also acquired District Officers.²

The District Officers shouldered heavy responsibilities in their respective districts. They were

responsible for the collection of revenue and taxes, the administration of justice, land settlement and the supervision of government officials, in particular the appointed headman (penghulu).³ Besides running the land office in the district, the District Officer also heard cases in civil courts since he was also the First Class Magistrate for the area on an ex-officio basis. Inevitably, due to the nature of his work, he spent more time outside his office than in and had quite a comprehensive knowledge of the people and their lives, especially if the district was a small one.⁴

Due to the enormous task the District Officers had to shoulder, Assistant District Officers were appointed, similarly called Assistant Collectors of Land Revenue in some states. Between 1884 and 1905, Assistant District Officers were appointed in Klang, Kuala Langat, Kuala Selangor and Ulu Selangor.⁵ In addition, the District Officers received assistance from clerical staffs which were quite sizeable, a Malay Assistant Collector, settlement officers and a host of subordinates drawn from all three main racial groups in the state.⁶ Since the District Officer dealt with land matters in the villages, his jurisdiction in most instances overlapped with that of those administering Islamic land law. However, the former had an advantage since he could always summon the kathis or penghulus on matters which hinged on land.

Ordinances passed by the government reinforced the powers of the District Officers and made their task a little easier in solving acute land dilemmas. Unquestionably, the passing of two Acts by the British, namely the Probate and Administration Act⁷ and the Small Estates (Distribution) Act of 1955 helped the District Officer. This is especially so where heirs ask for the distribution of land to be carried out according to the faraid. For an example of how the Act was implemented by a District Officer, a copy of a Malay Land Title from Kuala Langat dating from the fifties and showing the land distributed according to faraid is appended (Appendix B). It is safe to assume that the District Officer concerned must have heeded the advice of the district kathi before distributing the shares.⁸ Of the two Ordinances, the Small Estates (Distribution) Act of 1955 is more relevant and widely applied in the context of Islamic land inheritance. This Act will be discussed in greater detail in the next section. Meanwhile, we shall briefly consider the workings of the Probate and Administration Act of 1959.

(b) The Probate and Administration Act, 1959

This act, which came into effect on the 1st of February, 1960⁹, provided the procedures necessary for an individual to acquire probate and letters of

administration before any claim can be made to the High Court. These letters are normally issued through the subordinate courts. The issuance of the letters can be general or limited or with the will (wasiyat) annexed or otherwise authorising the person or persons named to administer the deceased person's estate in accordance with the law.¹⁰ With this certificate, the heirs (waris) can either make their claims individually through an advocate or solicitor, or, the most popular method, through the services of the Small Estate Officer or Pegawai Pesaka Kecil appointed in most districts. However, this act is rarely used by the District Officer or the Small Estate Officer since most of the claims made by the villagers involve property whose value is below M\$300,000,¹¹ the minimum figure covered by the Act. As mentioned above, most of the land held by the Muslims in the districts of Selangor is not prime land and thus it is unlikely that the value of an undivided estate will reach this figure.

(c) The Small Estates (Distribution) Act, 1955

This act may be said to have provided District Officers with some protection against accusations of injustice in the distribution of property of a deceased Muslim, in particular that their actions are not in accordance with the faraid. The main aim of the Act is to

simplify and speed up the resolution of the intricacies of land distribution, particularly the enormous problems created by small plots of land. This is a general phenomenon in nearly all districts in Selangor, especially in Malay populated areas. For the purpose of the Act, a small estate means;

'...an estate of a deceased person consisting wholly or partly of immovable property situated in any state and not exceeding three hundred thousand dollars (sic) in total value...' ¹²

The implementation of the above Act was carried out on a gradual basis with the east coast state of Kelantan being the frontrunner. This was on the 1st December, 1955. The Act came into force in Selangor on the 1st July 1957 i.e. approximately a month before the nation gained its independence. The uniqueness of the Act and its contribution to the villagers' welfare lies in in the following;

- (1) all the relevant claim forms are free and easily obtainable from the district office.
- (2) hearings are carried out in the balai raya (penghulu's) office and community halls. Sometimes these halls are located near the land in question.
- (3) In most cases, the District Officer will be able to acquire the services of the district kathi to determine the Islamic

shares in the event that the waris insist on the property being divided according to Hukum Sharak.

- (4) In nearly all cases involved, the services of a solicitor are not required, as stipulated under Section 31 whereby no advocate shall be entitled to appear on behalf of any party in any proceedings before the Collector who may grant or withhold such permission in each case as he thinks fit.¹³ This section safeguards the welfare of the villager as far as the financial aspect is concerned. There have been numerous occasions on which villagers have complained about solicitors overcharging for services rendered.¹⁴ It is beyond the capacity of the villagers to pay the vast amounts demanded from them.
- (5) the total payment involved is only M\$2.00.
- (6) Exemption is given by the district office for those who wish to register successive heirs.
- (7) Transmission among the heirs after the hearings will not be charged stamp duty.¹⁵

Apart from distributing land among the rightful heirs, the jurisdiction of the Act also covers other forms of immovable property. These are money saved in local banks by the villagers, pensions, shares and also the Employees Provident Fund (EPF) for those working in the public and private sectors. Again, the Act will only apply within the framework of the cost value laid down under Section 3(2) i.e. not exceeding M\$300.000.

There are other relevant laws of whose existence the District Officer needs to be aware, numbering twenty in all. Experience has shown that they are all of importance when District Officers and Small Estate Officers are dealing with distribution of property. These are:

1. Estate Duty Enactment, 1941.
2. Trustee Act, 1949.
3. Oaths and Affirmation Act, 1949.
4. Powers of Attorney Ordinance, 1949.
5. Contracts Act, 1950.
6. Evidence Act, 1950.
7. Presumption of Survivorship Act, 1950.
8. Public Trustee Ordinance, 1950.
9. Adoption Ordinance, 1952.
10. Mental Disorders Ordinance, 1952.
11. Registration of Adoption Ordinance, 1952.
12. Limitation Ordinance, 1953.
13. Civil Law Act, 1956.
14. Wills Ordinance, 1959.

15. Partnership Act, 1960.

16. Legitimacy Act, 1961.

17. Guardianship of Infants Act, 1961.

18. Age of Majority Act, 1971.

19. Rules of High Court, 1980.

20. The National Land Code.

The District Officer thus has to be familiar with a large number of laws. However, most of them tend to rely on their experienced subordinates officers such as the Assistant District Officers, settlement officers and more importantly the chief clerk of the land office who has vast experience in land matters. Chief clerks in most districts tend to stay long in their position, some as long as ten years, dealing with all sorts of land problems in that particular district.¹⁶ These individuals are an asset to the District Officer, especially also to newly-appointed Assistant District Officers and Small Estate Officers in the district.

Prior to the appointment of Small Estate Officers by the Director General of Lands and Mines in July 1974, land distribution to apparent heirs was handled by the District Officer and his subordinates. The powers of the

District Officer in distributing the estate are laid down in Section 15(1) of the Act which stipulates;

'...where the Collector (District Officer) is satisfied that all the beneficiaries of the estate being of full age and capacity have agreed between themselves as to the manner in which the estate should be distributed, the Collector may, after recording in the distribution order the terms of agreement, and the assent of the parties thereto, distribute the estate in the manner provided for by the agreement unless it shall appear to the Collector to be unjust or inequitable to do so.'¹⁷

Additional powers are also laid down in the same section whereby in the event of there being two or more beneficiaries, the District Officer can allocate separate lots to the beneficiaries or allocate them as co-proprietors or tenants in common in undivided shares.¹⁸

In order to avoid excessive sub-division of land, which is a very common phenomena among the Malays,¹⁹ the District Officer may as a last resort order the land or any part of it to be sold in such manner as may be prescribed.²⁰

However the Malay villagers are also protected under the Act and this to a certain extent limits the power of the District Officer. For example, Part 5 of the same Section states, 'no distribution order made in accordance with the parts mentioned earlier shall have effect where any beneficiary affected is a Muslim or a native unless (they) have assented to this.'²¹

If, as in most cases, the villagers wish their land to be distributed in accordance with the Islamic law of Inheritance, then the District Officer can refer to Section 19(1) 'if any difficult point of law or custom arises in any proceedings (if the question relates to Muslim law or custom), he can refer the matter for decision to a representative of the Ruler at the district level.'²² In this case, the Ruler's representative will be the district kathi who will determine the faraid shares. This section is possibly the most important element in the Act.

Whatever the powers vested under the Small Estate (Distribution) Act in the District Officers, there are considerations to be taken into account before a particular piece of land can be distributed. These considerations are laid down in the First Schedule, Section 15(5) as follows;

- (1) dividing land into several lots in several names may seriously diminish the value of the estate as a whole;
- (2) the real value of small shares, especially when represented by complicated fractions, is less than their proportionate values;
- (3) it is not conducive to good cultivation or peace in a family for persons who may have conflicting interests to be undivided co-proprietors of land;

- (4) it is greatly to the advantage of an infant that his co-proprietors should be those most nearly related to him; and
- (5) valuations are necessarily estimates and are only approximately correct; it is therefore unnecessary that the estimated value of a lot should be the precise amount of a beneficiary mathematical share; it is sufficient if the estimated value of a substantially corresponds to the beneficiary's calculated share.²³

(d) The Penghulu or Village Headman

The duties of the penghulu are not excluded from the Act. In fact his rôle is as important as that of the District Officer since as we have seen most of the initial hearings are held in his office before being referred to the District Officer. He is the person who actually knows what is happening and has a deeper knowledge of the personal background of those involved. Thus the information which he supplies is vital for a smooth-functioning hearing in front of the District Officer, and it can be said that the speed and efficiency of the administration of estate distribution at the district level partly hinges on the capability of a particular penghulu. If he is bereft of ideas and slow in carrying out his duties, everything can be bogged down. Under Section 18 of the Act, a further duty of the penghulu is to report to the District Officer in cases where a proprietor of any land has died and no

proceedings have taken place, whereupon the District Officer will direct the said penghulu to lodge a petition for distribution of the estate.²⁴

(e) The Pegawai Pesaka Kecil or Small Estate Officer

The workings of the Small Estate Distribution) Act of 1955 and the powers it gave to District Officers were not without problems, especially in dealing with the enormous number of small cases involving tiny areas of land. Since a backlog of cases to be dealt with by the lone figure of the District Officer had built up, the Director General of Lands and Mines, with the approval of the various state governments, decided to ease the situation. This was done by the setting up of a division within the Department to deal with the problem. Thus in July, 1974, a class of officers known as Pegawai Pesaka Kecil or Small Estate Officers were appointed as Assistant Collectors of Land Revenue (equivalent to the post of the Assistant District Officer). They were given the status and powers required to deal with a value of property ranging between M\$10,000 and M\$50,000. This figure was later revised to M\$300,000 under the Small Estate Act mentioned earlier. Despite the existence of Small Estate Officers, the District Officer and his subordinates still retain a role whereby they only deal with cases involving M\$10,000 and below. At least their burden has been

reduced. As far as the backlog of cases was concerned, the Small Estate Officers and the District Officers were instructed to liase and co-ordinate with each other. This involved a stack of files and paper work which was to be perused by the Small Estate Officers and handed back as soon as the investigation on each individual case was completed.²⁵

The workings of faraid and the problems encountered by both the District Officer and the Small Estate Officer will be discussed in the following chapter.

(f) The Formation of the Selangor Religious Department (Jabatan Agama Islam Selangor)

Before discussing the formation of the Selangor Religious Department or Jabatan Agama Islam Selangor (abb. as J.A.I.S.), the writer wishes to acknowledge the assistance given by Encik Ahmad Rafei who is the only individual at the time of this research who has made a detailed study of the role of this department and the only authority to have written on this subject so far. Much of the information here is based on his work.

When the British recaptured Malaya from the Japanese in 1945, one of their first initiatives was to attempt to restore the people's confidence in Islam. One of the

means by which they did this was to set up in Selangor, together with the Sultan, a department which administered the affairs of the Muslims in the state. Sultan Hishamuddin, whom the British reappointed as the ruler of the state in the same year, felt that there had already been signs of a decay in Islamic morality and knowledge among his subjects during Japanese rule. By his own efforts and with British support, the Sultan set up a temporary Islamic Department in his own office neighbouring his palace in Klang.²⁶ To staff it he appointed some lay religious officials whose salary was derived from the royal budget provided by the British.

The Sultan's efforts, as indicated earlier, were well received by the government, which perceived the department as a catalyst in channelling religious awareness and knowledge right down to the grassroots level of the population. An added help which the department provided to the British was that it helped to lessen their fear that the reduction of the influence of Islam would leave the population more open to the influence of communist subversive elements, which were growing in strength during this period.

For these reasons, the need to set up a proper and official religious department to administer Islamic affairs in the state became pressing. In 1946, a party of

Selangor officials was sent by the government to Johore to study the organizational structure of the religious department there.²⁷ A year later when the Selangor constitution was drafted, among other things included were the setting up of the Department of Religious Affairs and Malay Customs, the Jabatan Agama Islam Selangor, (J.A.I.S.). In 1948, the J.A.I.S. was officially established and in the same year moves were also made to adopt the Administration of Muslim Law Enactment in Selangor (see below). As will be seen later, the setting up of the J.A.I.S. and the implementation of the Enactment on December, 1952 can be considered as a watershed in the development of Islam in the state.

(g) The Administration of Muslim Law Enactment, 1952

The cementing factor between the Sultan and matters concerning Islam in the state was the passing of the above Enactment in the state legislatures. The Enactment was the first constructive initiative towards adopting Islamic Public law, together with the setting up of the J.A.I.S. In fact, as has been mentioned above, Selangor was the first state in the country to adopt such an Enactment and it would appear that this was the turning point in the implementation of Islamic public law in the real sense of the word. The Enactment provides for a general administration of Muslim law in both the public

and the private spheres. It defines the relation of Islam to the state and it also attempts to specify the substance of a ``Muslim Law'' for the Muslims in Selangor.²⁸

(h) The Role of Jabatan Agama Islam Selangor or Selangor Religious Department

The Jabatan Agama Islam Selangor was set up to answer and alleviate problems encountered by the Muslims in the state. The way in which it was drawn up seems to encompass every aspect of Islam. Problems of education, Islamic Personal Law, wakaf, zakat and baitulmal appear to be the main difficulties faced by the people, especially the villagers among whom illiteracy is quite high. They perceived J.A.I.S. as their guidance to overcome these problems. However, as will become clear from the discussions in the following chapter, it remained to be seen how effectively the department could fulfil the aspirations of the people.

It is also worth mentioning the role of the M.A.I.S. (Majlis Agama Islam Selangor) or the Selangor Religious Council. This Council, which is also headed by the Sultan, is the governing body controlling and determining the policies and functioning of the J.A.I.S. The M.A.I.S. will be discussed more fully below.

As noted above, the J.A.I.S. is responsible to the Selangor government as being the official voice on Islamic matters and the religious department of the state. Its staff salaries are entirely paid by the state government, and each year the government allocates specific budgets for its running. In its early years, the department was headed by a President. However, from the early 1960's onwards, it was headed by a Director, although his function remained the same.

(i) The Organizational Structure of J.A.I.S.

The President (later Director) is appointed by the State Civil Service Commission with the blessing of the Sultan. Normally, those appointed are people possessing strong religious backgrounds and qualifications. Lately, however, it has been more of a political appointment. It seems that those appointed must have strong sympathies for U.M.N.O., the party in power, since religion is a very important element in Malay society and thus has a political dimension. In the years before independence, the criteria for the selection of a candidate for the President of J.A.I.S. were not laid down for the simple reason that P.A.S. and other Islamic parties did not have a large following.

As President, the appointee will represent the Sultan in administering all Islamic affairs in Selangor. In practical terms, the President can be considered as the captain of a ship, a man with full responsibilities. The development or retardation of Islam in the state depends upon his determination, conscientiousness and integrity. In carrying out his duties, the President is assisted by a team of religious officials and civil servants who are all appointed by the State Civil Service Commission. After the President, the chief official is the Secretary of the Department, followed by the Mufti, Chief Kathi and the Secretary of Religious Education. It seems that the position of the Mufti is only third in the hierarchy of the Department although recently the status of the Mufti of Selangor (the only state Mufti in the country to enjoy this status) has been upgraded right to the State Executive Council level (popularly known as EXCO).

Apart from administering Islamic affairs at the state level, the President's role at the federal level is equally important, and he must keep himself informed of whatever religious developments are taking place outside the state.

The Secretary is of prime importance in the administration of the Department and is appointed according to the same criteria as the President. Initially, when the Department was in its infancy, the Secretary was personally appointed by the Sultan; Raja Nong bin Raja Hussein was the first Secretary from 1948-1969.²⁹ After his retirement, it was agreed that in future, all secretaries were to be appointed on the basis of their religious qualifications, with special favours being shown to those graduating from the Al-Azhar university. Thus, in 1969, with the consent of the Sultan, Ustaz Abu Bakar Zainal, a graduate of Al-Azhar, was appointed.³⁰ The Secretary assists the President not only in the administration of the Department, especially daily correspondence and finance, but is also in charge of supervising the branches of the department. These are located in every district in the state.

The Mufti is appointed by the Sultan in the Selangor State Council.³¹ The first Mufti of Selangor was Tuan Haji Yusof bin Shahbuddin, a Selangorian who was appointed from 1953-1967.³² He was a very religious individual who had been educated for many years in Mecca. Probably because of the limited choice of Selangorians of the same religious calibre, the Sultan put his entire trust and dependence upon him as the Mufti of the state. It was a general consensus among those in the royal

circles and the British that the state Mufti must be a Selangorian. It was probably for these reasons that Tuan Haji Yusof held the post for fifteen years.

The Mufti has three major functions. Firstly, he is the adviser to the Sultan in the religious affairs of the state. Prior to the establishment of the Department, the Sultan at times merely made his own decisions on Islamic affairs with the assistance of religious officials of the palace. These officials would brief the Sultan on what action should be taken. In normal circumstances, they would refer to earlier minor enactments for matters like the appointment of a kathi, registration of marriages, divorces and burials,³³ and regulations to provide punishment by law for adultery amongst Muslims.³⁴ The Mufti also advises the Sultan on matters relating to Malay customs. Perhaps the most important function of the Mufti in the perception of the people, especially at the village level, is his role at the death or installation of a sultan. He will perform all the religious rites for burial and prayers, and will do likewise for the new ruler. Secondly, the Mufti is empowered to issue fatwas, formal legal opinions.³⁵ As Head of the Legal Committee under the M.A.I.S. , the Mufti is enjoined to follow the orthodox tenets of the Shafii school in issuing his fatwas. Section 42 (1) states;

'...in making and issuing any ruling in manner herein before provided the Majlis and the Legal Committee shall ordinarily follow the orthodox tenets of the Shafiete Sect...' ³⁶

This section also indicates that the other three tenets may be followed in issuing fatwas. However, this can only be done in terms of the explanation given below in the same section.;

'Provided further that, if it is considered that the following of either the orthodox or the less orthodox tenets of the Shafiete Sect will be opposed to the Public interest, the Majlis or the Legal Committee may, with the special sanction of His Highness the Sultan, follow the tenets of any of the three remaining sects as may be considered appropriate.' ³⁷

From this, it can be seen that the enactment to which the Mufti has to adhere is not particularly rigid in the terms of its implementation. The three remaining sects to which the enactment refers to are the Hanafi, Maliki and Hanbali.

As far as the issuing of fatwas is concerned in the state of Selangor, the Mufti and his members need to be more responsive and to be kept more informed of the demands of those who are calling for the implementation of the Islamic law in the real sense of the word. The situation has changed tremendously since Malaya gained independence in 1957. Among the areas which perhaps need

to be restructured are the method of issuing fatwas and the composition of the fatwa committee which should be drawn from those who have expertise in the field of Islamic jurisprudence. Nonetheless, it is not the intention of this research to criticise the implementation of Islamic law, but simply to describe and analyse the situation as it exists.

Thirdly, the function of the Mufti is to give public lectures and to be responsible for religious education throughout the state of Selangor. However, his responsibility for religious education does not overlap with the role of the district kathi and ustaz (religious teachers who are appointed by the department to teach basic religious education at the village level). The Mufti's public lectures and religious teachings are only given on a scheduled basis in selected mosques and suraus. Usually, the audience in these places are drawn from the older generation. The main theme of the lecture normally centres around the need to establish daily prayers and observe the personal duties incumbent on Muslims.³⁸ His audience as mentioned above are mainly old kampong people who sit and listen attentively. They very seldom ask questions directed to the Mufti. It is commonly accepted among the villagers who attend these lectures that a Mufti who has visited their mosque and lectured them is an expert in the Islamic field who will

always tell the truth and who should be followed. It is very rarely that a listener will question or argue with the Mufti, since if he does he will be regarded as 'kurang ajar' (having a disrespectful attitude) towards the Mufti.

The Mufti's role in the administration of faraid, zakat and baitulmal in the state is equally important. He is the adviser to all the sub-committees appointed to deal with these matters. As far as faraid is concerned, the Mufti is the only person in the state who can validate calculations of the faraid made by the kathi at the district level. Normally, the kathis have the power to make divisions and decisions on a particular property in questions, but having said this, it must be borne in mind that before a final decision can be taken in determining the shares of the inheritors, the kathis must submit their recommendations and calculations to the Mufti. This is for verification and for his final approval. Only after this has been done can the district kathi make recommendations to the District Officer for further action.

The role of the Mufti has become increasingly difficult, especially in the 70's. The religious issues involved have been more complex as society becomes more affluent and sensitive to all religious matters involving

their everyday lives. No matter what difficult challenges ahead of him, he must make sure that the law of God comes first before any individuals. If he is able to do this, there will be no doubt that he will earn more respect than he can hope for at present.

(j) Structure and Organization of the Majlis

Agama Islam Islam Selangor

The Council of Religion and Malay Customs, known as the Majlis Agama Islam Selangor (M.A.I.S.), is an entirely different department from the Jabatan Agama Islam Selangor (J.A.I.S.). However, both of these departments are headed by the same Director, although the organisation and functions differ. Unlike J.A.I.S. which is under the jurisdiction of the Selangor State government, the Majlis Agama Islam Selangor is under the authority of the Sultan who is regarded as the Islamic Head of the state. Created in 1953, the Majlis is an independent body.³⁹ Its administration is funded from the collection of zakat and fitrah, and also through properties acquired from the Muslims in the state from the institution of baitulmal. As an independent body, the Majlis is permitted to enter into business activities and contracts, utilizing whatever funds or properties are at its disposal.⁴⁰ This can only be carried out as long as the activities are implemented in the context of hukum

sharak especially as regards the avoidance of riba (interest). The Majlis is empowered to act as trustee for properties and inheritances left by deceased persons,⁴¹ especially as regards undivided shares of land and property left behind without any wasiyat (will).⁴²

The activities of the Majlis are divided into two categories, one dealing with making policy and the other with implementing it. The policy makers are composed of the President, the Mufti and seven elected members.⁴³ Among the seven is one Indian Muslim and one Pakistani. They are appointed by the Sultan and their term of office is normally three years; they can be reappointed when their term expires.

The Consultative Majlis is vested with great powers by the Sultan as far as the implementation and administration of Islamic affairs and Malay custom in the state is concerned.⁴⁴ Whatever decision is made must receive the Sultan's approval and blessing before it is implemented.⁴⁵ However if there is a situation which requires an urgent decision, the President after consultation with the Menteri Besar or Chief Minister can make the decision without calling a full council meeting.

The Consultative Majlis will advise the Sultan in matters involving the general administration of the

Majlis, its finance, the issuance of fatwa, zakat collection which includes zakat on property, padi, business, wasiyat (wills), nazar (vows) and baitulmal.⁴⁶

Apart from the above, the Consultative Majlis can also appoint the various committees involved in the planning and drafting of policies to be carried out by the Majlis.⁴⁷ Perhaps the most striking power of the Consultative Council is its ability and authority to make a final decision on a fatwa which has not received full consensus by the Committee on Fatwa.⁴⁸ By 1970, there were already eleven committees dealing with the various aspects of Islamic affairs in the state of Selangor. These are;

- (1) Committee on Fatwa.
- (2) Committee on the Majlis itself.
- (3) Committee on the Administration of Religious Schools.
- (4) Committee on the Selection and Monitoring of Religious Officials and Teachers Board.
- (5) Committee on the Information and Supervising of Mosques in Selangor.
- (6) Committee on Baitulmal, Wakaf and Nazar.
- (7) Committee on the Administration of zakat and fitrah.

- (8) Committee on the Determining of Boundaries for each different kariah (area of a particular village) mosque.
- (9) Committee on the approval of assistance by the Majlis to the poor, orphans and muallaf (new converts).
- (10) Committee on the Appointment of Finance Officials for the Majlis.
- (11) Committee⁴⁹ on Ulang Bicara (rehearing of trials).

These committees have succeeded to a certain extent in alleviating some of the administrative problems confronting Islamic administration in the state although much remains to be done.

In implementing the policies laid down by the Consultative Majlis, the Majlis established its central office in Shah Alam for administrative purposes. It also has branch offices in every district throughout Selangor. These offices are located in the district kathi's office.⁵⁰

The function of the Majlis Agama Islam Selangor does not overlap with that of Jabatan Agama Islam Selangor. The former only deals with areas where the latter is not involved. These areas are zakat/fitrah, baitulmal, land related to wakaf, baitulmal, religious information, adult

religious education, Islamic kindergartens and finally the registration of new converts in the state. In fact as can be seen in the forthcoming chapter, the role of the Majlis has been increasingly important in recent years as it is the sole body in determining the Islamic administrative and legal policies in the state of Selangor.

(k) The Shariah Law Courts

Prior to the coming of the British, it was assumed that justice in the Malay States including Selangor would be administered in the shariah courts,⁵¹ while the final appeal was heard before the Sultan. The arrival of the British dramatically altered the situation, since they were more concerned to set up secular courts which were familiar and best suited to them without considering the need to re-establish the Islamic legal system. As a result the role of the shariah courts was greatly diminished. As Professor Ahmad Ibrahim has observed, "the Shariah courts (in the early years of British rule) were relegated to a subordinate position. Their jurisdiction had been curtailed under British rule and they dealt mainly with family matters and minor criminal offences."⁵² It cannot be denied however, that the shariah courts played an important role in the administering of religious justice among the Muslims at

the grassroot level. They perceived this institution as a place for final arbitration and a place where they could air their grievances, and regarded it as having the same status as the District Officers, kathis and the penghulus. Nevertheless there were cases involving faraid and wakaf where initially the views and opinion of the kathis were taken into consideration, but in the final analysis, the final decision was made by a non-shariah court. A very important case which needs to be mentioned is the Ramah v Laton case in 1941.⁵³ In numerous court proceedings, this case has been referred to as a precedent for judges in making their decisions even after independence. This Selangor case involved a Malay widow who sued the second widow of her late husband for certain lands and property, claiming that all the land and property was harta syarikat (the joint earnings of husband and wife, a partnership) and that a half share was hers. After hearing the evidence of the Chief Kathi and of the kathi of Ulu Langat, Chief Justice Thorne concluded that the adat principle of harta syarikat as part of the Muslim law, was in force in Selangor. As the Judge of the Court of Appeal, Justice Thorne held that in the Federated Malay States, Muslim Law is not foreign law but the local law and the law of the land.⁵⁴ He therefore ruled that the plaintiff was entitled to half the immovable property of the deceased husband as harta syarikat.⁵⁵

From the above case, it can be said that although in principle, the issue was settled in accordance with faraid on the advice of the kathi, the final decision is still made by a civil Judge and not by a chief kathi presiding in a shariah court. Similarly, it can be said that through deference was paid by the Judge when he held that ``Muslim Law is not foreign, but local'', the fact still remained that the Shariah's Court role was bypassed by the civil courts.⁵⁶ It can be assumed then that the advice of the kathi was only needed as far as the division of shares of the land was concerned and was not part of the final decision making process.

There were those who were sceptical about the integrity and capability of some kathis to conduct cases involving the property of deceased Muslims in the state. Lawyers like Taylor who recorded a series of cases in the distribution of property after a dissolution of marriage came to the conclusion that more often than not kathis were confused between adat rule and Islamic law when they were consulted.⁵⁷ Probably there is some truth in his opinion but it would be unreasonable to suggest that the courts presided over by kathis should not be allowed to make the final decision for this reason. Moreover, it can be assumed that Taylor's view was preconceived since in most cases he failed to appreciate that in some cases the opinion of kathis was perfectly correct.⁵⁸ Mackeen gives

an example of this in the proceedings of the Lebar v Niat case⁵⁹ used as an example of the confrontation between modern law courts and kathis who were not totally familiar with Islamic jurisprudence.⁶⁰ This problem in fact was indeed quite serious in pre-independence days, as Taylor suggests. Mackeen's view is supported by Banks and Salleh Buang who argue that in general the attitude of British administrators towards Islamic land law (and officials) was not encouraging,⁶¹ and that in they perceived it as a threat to efficient rule and thus opposed the influence of Islamic legal settlements concerning property.⁶² This was partly because in their opinion British property laws were fairer, and they seem to have feared that the principles of faraid, which appear to be biased towards male inheritance, would create a concentration of wealth in rural areas.⁶³ More importantly, British administrators were not well versed in the running of land administration in accordance with Islamic law. The doubts that surrounded the efficiency and usefulness of the Shariah Courts were further enhanced by the question of legal codes. Islamic legal codes, although present in the region, were seldom consulted and analysed. Stamford Raffles concluded that in most states (including Selangor) what he called 'the civil code of the holy Qur'an' was almost unknown.⁶⁴ His views are supported by historians and writers such as Wilkinson, Marsden and Kassim Ahmad.⁶⁵ During this

period the legal codes or digests, which were usually called undang-undang, contained few and sometimes no elements of Islamic law. Thus the Malay Digest contained a relatively low proportion of shariah and this was mainly confined to matrimonial and commercial matters. Where criminal law was concerned, Islamic penalties were suggested only as alternatives to the adat law of the land.⁶⁶

There was a glimmer of hope until 1948, before which date shariah courts were part of the judicial structure, but even so they failed to meet the expectation that they would help to revive the Islamic legal system. After 1948, the shariah courts were excluded as part of the judicial structure in the country.⁶⁷ Respective state governments were given the power to set up their own shariah courts, thus relieving the British of any responsibilities.

Despite these setbacks to the status of the shariah, some credit should be given to the British for the adoption by the Selangor Administration of the Muslim Enactment of 1952. Among other things, this provided the necessary procedures and regulations to set up shariah courts officially, if possible in every district in the state.

The shariah courts were organised into the Kathi Besar Court or Chief Kathi Court, the Kathi's Court and the Imam Court, the final court of appeal being the Appeal Committee. Predictably, the most popular court among the Muslims is the kathi court.⁶⁸ In Selangor, the court has the power to try any offences committed by a Muslim. The maximum term of imprisonment is three months and a fine of M\$100 or both.⁶⁹ In practice up to the time of writing most of the cases heard in the shariah courts in the districts have appeared to conform to a few similar types, involving for example claims for cerai ta'alik (divorce by the breaking of a condition in accordance with Hukum Sharak provided in the Enactment).⁷⁰ The ground for the claim is usually that the husband has left home and has failed to provide sufficient maintenance for the wife and children.⁷¹ In fact, the justification put forward by a wife for leaving her husband after being married for some time is normally that of insufficient food provision.⁷² From this it can be seen that the point of argument usually centred around the financial and economic aspects of the everyday lives of the people. As in many other developing Muslim countries, those who come to the courts for redress for their grievances are mostly from the poorer section of the population.

The functioning of the Shariah Appeal Committee has come under heavy criticism from some ulama in the country. Being at the apex of the shariah court structure, it hears appeals against decisions made by the Chief kathi courts or the kathi's court. Ironically, those appointed to sit on this Committee are mainly drawn from individuals who do not have a substantial background in Islamic law. It is a remarkable fact that in Selangor the Chairman of the Appeal Committee is required to be a person holding the post of a Magistrate in the civil court.⁷³ It seems absurd for a Magistrate, with no Islamic law background, let alone any experience in Islamic land law cases, to sit as a Chairman of a crucial religious court. However, moves have been made by the present state government to rectify this situation.

(1) The Shariah Courts under the Selangor
Enactment of 1952

There was a presumption that the role of the shariah courts under the Enactment of 1952 would be strengthened in the wake of the lethargic approach shown by the British. The Enactment's principal aim was to provide the administrative and judicial apparatus to maintain Islamic authority in Selangor and also to support the administration of Islamic religious affairs and law.⁷⁴ The administrative aspect has been dealt with earlier.

The Enactment was the first constructive initiative carried out by the Selangor government towards adopting Islamic public law. In fact Selangor was the first state in the country to implement such an Enactment and it would appear that this was the turning point in the implementation of Islamic public law in the real sense of the word. Under the Enactment faraid, wakaf and baitulmal came under the jurisdiction of the Court of the Chief kathi. It is stipulated in Section 45(3b) that the court of the Chief kathi, in its civil jurisdiction, shall hear and determine all actions and proceedings in which all those who are concerned are Muslims in relation to the following;

- (1) bethrotal, marriage, divorce, nullity of marriage or judicial separation,
- (2) any disposition of, or any claim to property arising out of any matters set out in the above.
- (3) division of, or claims to, sepencarian (sharing) property,
- (4) determination of the persons entitled to share in the estate of a deceased person who professed the Muslim religion, or of the shares to which such persons are respectively entitled,
- (5) wills or death-bed gifts of a deceased person who professed the Muslim religion,
- (6) wakaf or nazar (vows).⁷⁵

Despite the laying down of the above guidelines for the kathis to carry out their duties, in reality they were rarely adhered to, especially when it came to land matters. As Hooker puts it;

'The Enactment itself does not make clear the jurisdictional boundaries between the Islamic and civil court.'⁷⁶

Professor Ahmad Ibrahim criticises the following provisions of the enactment;

'Save as expressly provided in the Enactments nothing contained therein shall derogate from or effect⁷⁷ the rights and powers of the civil courts' and,

'Nothing in this Enactment contained shall affect the jurisdiction of any civil courts and in the event of any difference between the decision of a Court of Kathi and the decision of a civil court acting within its jurisdiction, the decision of the civil court shall prevail.'⁷⁸

From the above, it appears that the Enactment does not give the shariah courts sufficient power. In addition the workings of the Enactment itself are not in accordance with Islamic practice. Some writers on Islamic law in the country have severely criticised Section 41(2)⁷⁹ which among other things stipulates that;

'the Council is to issue fatwa according to majority opinion',

This method is contradictory to the concept of ijma (consensus or unanimity) by the ulama.⁸⁰ It must be reiterated that according to Islamic jurisprudence only gaul muktamad (final decision) concerning a particular hukum can be issued as fatwa. Ijma is gaul muktamad i.e. agreed by the ulama, since it is one of the sources of Islamic jurisprudence that is accepted by every mazhab within ahli sunnah wal jama'ah.⁸¹ Therefore it is claimed that the method of issuing fatwas according to majority opinion is repugnant to the procedure of Islamic jurisprudence.

Finally, criticisms were also made of the attitude shown by members of the Legal Committee appointed under the Enactment. The blame in these cases is usually laid on the Mufti. It seems that the Mufti as in many other states seldom argues with or goes against the opinion of those above him. This is especially so if the issue is controversial or detrimental to vested interests, on a particular point of the Islamic law. In most cases they are tight-lipped and refuse to be committed, and because of this those who are conversant with Islamic law tend to perceive them as puppets of the state government. This has contributed to a grave weakening in the adoption of Islamic law.

If there is some truth in the criticism that the British adopted a lethargic attitude towards the shariah courts, the Selangor government after independence were only slightly better. True, after this period the states were given the power to make laws relating to constitution, organisation and procedures for the shariah courts. Amendments to the Enactment were frequently made since 1952 to improve the Islamic legal system in the state. They did set up some shariah courts in the various districts, all being supervised and monitored by the Selangor Religious Department. However the problem still remained intact i.e. the domination of the civil courts. Loopholes, avenues and alleyways still exist for the civil courts to penetrate into the decision making process of the shariah courts, and the Federal government still has some indirect control over the land laws in the state. Faraid, wakaf, intestacy and testacy are no exception despite the fact that land is a state matter. Shariah courts still have to give leeway to the Small Estate Distribution Act and the Probate and Administration Act which was discussed earlier.

(m) Problems of the Shariah Courts.

In considering the role of the Shariah courts in the state, the part played by the post-independence Selangor government cannot be exempted from criticism. It appears

to have been over-cautious and negligent in its attitude to the role and function of the shariah courts, to which it has shown no great sense of commitment. These attitudes have been much criticised by prominent Malay Muslim scholars⁸², most of whom have made suggestions for the betterment of the shariah courts. They have also pinpointed the various factors which have contributed to the depressing state of affairs confronting this Islamic legal institution. The main factors may be summarised as follows;

Many of the courts have no proper court house⁸³ (sometimes sessions were conducted in a temporary court house). This is especially true in some districts in Selangor. Some courts in Selangor's nine districts still appear to be in a shabby condition - frequently small in size, no proper witness room and normally located near the road frontage and not suitable for hearings.

Many do not have adequate and qualified staff. There are office facilities available but even so many of them are obsolete. Some of the kathis in the late 60's were university graduates but ironically, they were not given any professional status.⁸⁴ With this kind of situation, kathis in most cases are looked down upon by other government civil servants especially some of them in the Diplomatic Administrative Service, commonly known as

Pegawai Tadbir Diplomatik (P.T.D.). This happens in most districts, where some District Officers tend to assume that the kathis are low level officers of the government with little religious knowledge. In monthly meetings, the views expressed by district kathis are either ignored or receive a cool reception from the District Officer and local politicians.⁸⁵ Thus, no one can blame those graduates from the Faculties of Shariah in the local universities who were not attracted to become judicial officers in the shariah courts.⁸⁶ Some have even refused to be appointed as kathis because of the low pay scales. In order to ease the situation, the Selangor government in the 60's and 70's laid down the condition that prospective sponsored students should be bonded for a number of years (7 years) before they could work elsewhere. This condition was widely applied to those studying at Al-Azhar and universities in Mecca and Medina. In fact these graduates were quickly absorbed into the kathi scheme as soon as they returned home.⁸⁷

Another impediment confronting shariah courts in Selangor was the fact that the rules of procedures and evidence applied in the courts are unclear.⁸⁸ Sometimes it is difficult for the kathis to understand the application of the civil laws of criminal, civil procedure and of evidence.⁸⁹ Appeals from the shariah courts to the Supreme Court are not provided for.⁹⁰

Instead, appeals are still being heard by the Appeal Committee mentioned earlier. In addition, decisions made by the kathis court together with those from the Appeal Committee are not reported and there are therefore no precedents to guide and instruct the kathis.⁹¹

Probably the most important hurdle to be cleared before the Selangor government can give the shariah courts their proper place is the need for pressure on the Federal government to revise the Small Estate Distribution Act so that it is totally in line with the concept of faraid. Although the revision of the Act needs parliamentary approval, state governments can still play an important role in trying to redress the situation. Already the Council of Fatwas have decided, on the 14th April, 1982, that the Act can no longer be utilised in the implementation of the Islamic Law of Inheritance. Suggestions by similar scholars have already made the government aware of the need to upgrade the shariah courts and the relevant laws. Changes have slowly occurred in recent years, especially among the circles of Selangor officials and politicians.

NOTES TO CHAPTER 3

1 Emily Sadka, op. cit, p. 214.

2 Op. cit, p. 215.

3 Op. cit, p. 198.

4 Heussler, op. cit, p. 292.

5 Sadka, op. cit, loc. cit.

6 Heussler, op. cit, loc. cit.

7 Prior to 1919, it was called the Probate and Administration Enactment. This Act has been revised several times, most recently in 1959.

8 Earlier records are not available, however, according to Encik Ali Sario, the Chief Clerk of the Land Office who is a local, Muslims in the district practiced 'adat kampong' - fairly similar to faraid - before 1950.

9 Kamarulzaman Habib, Sistem Pembahagian dan Pengurusan Pesaka Di Semananjung Malaysia, Kertas Kerja, June, 1983, Kuala Lumpur, p. 3.

10 Probate and Administration Act, 1959 Part 1 (2).

11 Prior to revision of the Act in 1972 and 1980, the minimum value was M\$25,000.

12 Small Estates (Distribution) Act 1955, Part II Section 3(2), p. 7. M\$300,000 or M\$75,000.

13 Op. cit, p. 24.

14 Writer's own experience.

15 Kamarulzaman, op. cit, p. 4.

16 Writer's own experience in the district of Kuala Langat.

17 Small Estate, op. cit, p. 15.

18 Ibid.

19 See Wilson on Land Fragmentation in the Krian District of Perak.

20 Small Estate, Act, op. cit, p. 15

21 Ibid.

22 Ibid.

23 First Schedule, Small Estate Act, p. 26.

24 Working Paper No. 13/81 presented by Wan Abdul Halim, Small Estate Officer for the state of Terengganu on 'Kearah Melengkapkan Diri dan Menyelaraskan Tindakan Pegawai Penjelasan Pesaka Kecil, p. 10.

25 Small Estate, op. cit, p. 17.

26 Ahmad Rafei Abdullah, Struktur, Fungsi dan Organisasi, Jabatan Agama Islam Selangor, Honours Thesis, University of Malaya, Kuala Lumpur, p. 27.

27 Ibid.

28 Hooker, op. cit, p. 144.

29 Ahmad Rafei, op. cit. loc. cit.

30 Ibid.

31 Section 39(1) Enactment of Selangor Administration Law, 1952.

32 Ahmad Rafei, op. cit, p. 35.

33 Order in Council of the Selangor State Government of June 14, 1884.

34 Regulation XI of 1894.

35 Ahmad Ibrahim, op. cit, p. 152.

36 Selangor Enactment, op. cit, loc. cit.

37 Ibid.

38 Ahmad Rafei, op. cit, p. 41.

39 Op, cit, p. 79.

40 Ibid.

41 Ahmad Rafei, op. cit, p. 80.

42 Ibid.

- 43 Ibid.
- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 Ibid.
- 49 Ibid.
- 50 Ahmad Rafei, op. cit., p. 94.
- 51 Ahmad Ibrahim, 'The Shariah Court and Its Place in the Judicial System', unpublished Working Paper, May, 1986, p. 37.
- 52 Ibid.
- 53 Federated Malay States Law Review, 1921.
- 54 Malayan Law Journal, 1941, p. 7.
- 55 Ahmad Ibrahim, op. cit. loc. cit.
- 56 Ibid.
- 57 Abdul Majeed Mackeen, The Shariah Law Courts in Malaya in Readings on Islam in South East Asia, (1985), p. 229.
- 58 Ibid.
- 59 Ibid.
- 60 Ibid.
- 61 David J Banks, 'Islam and Inheritance in Malaya', American Ethnologist, Vol. 3 (1976), p. 582.
- 62 Ibid.
- 63 E.N. Taylor, 'Malay Family Law', JMBRAS May, 1937, p. 13.
- 64 M.B. Hooker, Islam in South East Asia, (Leiden, 1983), p. 27.
- 65 Ibid.

66 Hooker, op. cit, loc. cit.

67 Ahmad Ibrahim, op. cit, loc. cit.

68 Kathi courts was first established by the British in 1922. There were eight Kathi courts, according to the Selangor Estimates of 1922. These were located in Klang, Kuala Lumpur, Kuala Langat, Ulu Langat, Sabak Bernam, Kuala Selangor Kuala Kubu Bharu and Rawang Selangor both in the Ulu Selangor district). These courts were located within the compounds of the kathi's house.

69 Islamic Family Law of Selangor, S(3)(5), p. 79.

70 Azizan Abdul Razak, M.A. Thesis, The Administration of Islamic Law in Malaya, University of Kent, 1978, p. 162.

71 Ibid.

72 Ibid.

73 Selangor Administration of Muslim Law Enactment, 1952, p. 1402.

74 Ibid.

75 Hooker, Personal Laws of Malaysia, op. cit, p. 47.

76 Ibid.

77 Ahmad Ibrahim, op. cit, loc. cit.

78 Ibid.

79 Including Ahmad Ibrahim, Othman Ishak.

80 Othman Ishak, 'Fatwa Perundangan Islam Kedudukan diNegeri Selangor', Tamadun Islam, 1980, p. 116.

81 Ibid.

82 Such as Ahmad Ibrahim, Nik Rashid, Saedon Awang.

83 Ahmad Ibrahim, op. cit, p. 38.

84 Ibid.

85 Writer's own experience.

86 Azizan, op. cit, p. 136.

87 Ibid.

88 Ahmad Ibrahim, op. cit, loc. cit.

89 Ibid.

90 Ibid.

91 Ibid.

CHAPTER 4FARAIID OR ISLAMIC LAW OF INHERITANCE(a) Wasiyat (Bequest)

Briefly the meaning of wasiyat (Arabic wasiyya) is a mandate, or as a technical term, last will.¹ It can also be defined as "a gift of property by the owner to another contingent on the givers death".² The institution of wasiyat is very critical as it forms part and parcel of the faraid process. In fact in practically all faraid cases the notion of wasiyat is involved and those dealing with it will always tend to scrutinise the genuineness of the bequest.

According to Nawawi, the capacity to make a wasiyat is accorded to everyone, whether the person is a Muslim or not, without distinction of sex, who is adult, sane, and free; and according to the Shafi'i mazhab, to a person otherwise incapable by reason of imbecility.³ As far as public benefit is concerned, it is compulsory that testamentary dispositions must have some lawful object, for example, a legacy cannot be made for the upkeep of a Christian church or a synagogue.⁴ There are limitations placed upon testators who wish to bequeath their property

to the ones they love. Such a bequest must not exceed a third of the estate. This will be discussed further below.

The importance of wasiyat is reflected in various verses of the Koran and Hadith, among which are included the Sūrat al-Baqarah (2):180-182;

'It is prescribed when death approaches any of you, if he leaves any goods, that he make a bequest to parents and next of kin, according to reasonable usage. This is due from the God-fearing.'⁵

As for the hadith, the importance of wasiyat is shown by saying of the Prophet S.A.W. as narrated by Jābir b. 'Abd Allāh;

'Whoever died after making a will died on the straight path and following the Prophet's tradition. The one who died in piety or achieved martyrdom receives absolution.'⁶

In recent years this hadith has become increasingly popular and is frequently quoted by district kathis and penghulus in order to encourage villagers to leave a written will. Advice is also given to those who are confused about the rights of the waris they will leave behind. For those who do not have any heir, wasiyat will be an important element in determining in which

direction the property will be channelled. Furthermore, in case of intestacy, the property will be distributed in accordance with faraid.

Under the Muslim law of will, a particular individual who owns property is permitted to bequeath up to one third of the property in question to a charitable object or to anyone except a legal heir.⁷ The remainder must be divided among the heirs in accordance with the rule of faraid. Any division in favour of a legitimate heir is valid only if it is unanimously approved by the coinheritors.⁸ This is in accordance with the Prophet's traditions as reported by Ibn 'Abbās;

'Will in favour of an heir is not valid except when the other heirs give their consent.'

In simple terms the above hadith is saying that those relatives whose shares are fixed under faraid are not allowed to have a larger or smaller share by means of wasiyat, unless the heirs have agreed to this before the death of the testator; nor can anyone deprive a legal heir without his consent through any wasiyat. Apart from this, there is also the question of that portion which the individual is allowed to bequeath as he wishes,

which is restricted to one-third of his property. In the words of a celebrated hadith reported on the authority of Sa'd b. Abi Waqqās;

'I was taken very ill during the year of the conquest of Mecca and felt that I was about to die. The Prophet visited me and I asked: "O Messenger of Allah I own a good deal of property and I have no heir except my daughter. May I make a will, leaving all my property for religious and charitable property?" He (the Prophet) replied: "No." I again asked may I do so in respect of $\frac{2}{3}$ of my property? He replied "No." I asked: "may I do so with one half of it?" He replied: "No." I again asked: "May I do so with $\frac{1}{3}$ of it?" The Prophet replied: "Make a will disposing one third in that manner because one third is quite enough of the wealth that you possess. Verily if you die and leave your heirs rich it is better than leaving them poor and begging. Verily the money that you spend for the pleasure of Allah will be rewarded, even a morsel that you lifted up to your wife's mouth."¹⁰

It appears that this hadith has been manipulated and wrongly interpreted by certain individuals to justify their desire to leave a sizeable amount of property to their waris (taking the meaning in the last part of the hadith). This cannot be a yardstick for some individuals to leave everything for their immediate heirs without taking into consideration humanitarian consideration for others in society. From the writer's experience, there are those Muslims in the district who have argued that it is their duty to leave their waris in a financially

stable position, and that this is their priority rather than voluntarily contributing some of their wealth to deserving relatives and charity. This stingy attitude is quite difficult to eradicate among some Muslims in the district. It would be possible to give more than the legal share to such a relative either by consent or by hiba.¹¹ On the other hand, Islam encourages its followers to spend their wealth in the path of Allah. This is stipulated in the following verses of the Qur'an;

'Those who spend
Their substance in the cause
Of God, and follow not up
Their gifts with reminders
Of their generosity
Or with injury, - for them
Their reward is with their Lord:
On them shall be no fear,¹²
Nor shall they grieve.'

'And whatever ye spend
In charity or devotion,
Be sure God knows it all.
But the wrong-doers
Have no helpers.'¹³

'Those who (in charity)
Spend of their goods
By night and by day,
In secret and in public,
Have their reward
With their Lord:
On them shall be no fear,¹⁴
Nor shall they grieve.'

A wasiyat is classified as a contractual transfer of property or akad (Arabic 'aqd) and is completed by the

offer (Ijab) of the transfer and the acceptance or kabul (Arabic qubūl) of the transferee. To be valid a will must have four components, namely;

- (1) the person who makes the bequest (Mūsī).
- (2) the person in whose favour the bequest is made (Mūsā lahu).
- (3) the thing bequeathed (Mūsā bihi).
- (4) the offer and acceptance.¹⁵

In addition, a wasiyat is regarded as null and void if it has been made during marad al-maut or death sickness. A person who becomes so ill as to be in a danger of death may no longer dispose of his property to a greater amount of not more than one third as stated before.¹⁶ However should he against all hope recover, these dispositions are null and void.¹⁷ Nonetheless, a sick person, not in any danger, may freely dispose of his property; even to the extent that if he unexpectedly dies during this sickness, his dispositions have all the same their full legal effect.¹⁸ If there are doubts as to the uncertainty of a malady in question on the person, then, it should be ascertained by two doctors, free men of irreproachable character.¹⁹ Islamic law has laid down

the following as dangerous maladies as far as wasiyat is concerned;

- (1) colic.
- (2) pleurisy.
- (3) constant flow of blood from the nose.
- (4) chronic diarrhoea.
- (5) phthisis.
- (6) commencement of paralysis even where merely partial and,
- (7) even vomiting in general if very violent and accompanied by pain or effusion of blood, and also continuous²⁰ or intermittent fever, but not quartan fever.

Nawawi added a few more situations which are viewed by the Shafi'i mazhab as analagous to a dangerous malady - being made a prisoner of war by infidels who do not usually give quarter; being in a desperate battle between two armies of equal force; being condemned to death by the law of talion, or to be stoned to death; being in a ship in the middle of a tempest or a rough sea; and finally a woman in grievous pangs of childbirth, before or after confinement.²¹

The issue of death sickness has been a delicate dilemma faced by the writer from his experience in the district of Kuala Langat, especially in determining the validity of a particular wasiyat. It will be discussed in the final section on problems encountered in implementing the application of faraid in the district.

The application of wasiyat in settling faraid was unofficially adopted by the Muslims in Selangor as early as 1874.²² It was a common practice among the villagers to make their will either orally or in writing, in most cases if it was written the Jawi script was used. There are no official records kept in the districts in the state to substantiate the above statement, but it seems clear from statements made by local retired penghulus in the district of Kuala Langat, that the making of wasiyat was quite a common phenomenon among rural Malays. Witnessess involved in the transaction of these wasiyat were usually the elders in the community and in most cases, the wak lurah (ketua kampong or village headman). During the early history of the state, to the knowledge of the writer, it was assumed that the faraid process was not as intricate and complex as it in fact is. People involved were generally rational, willing to adopt a policy of give-and-take, and, more importantly, ignorant as to the religious legality of a particular wasiyat. In

the event of discontent or dissatisfaction among the waris, they preferred to let the dust settle and hoped that the problem could be resolved amicably.

By the early twentieth century, the issue of wasiyat in Selangor came into prominence. A very well known case in the state was heard in 1915, that of Shaik Abdul Latiff v Shaik Elias Bux.²³ The deceased person, Shaik Elias Bux had bequeathed his property entirely to his wife and daughter, ignoring the fact that he was only allowed to bequeath one-third of it, and then not to a legal waris. The residue of such property must descend in fixed proportions to those declared by Islamic law to his heirs unless the heirs consent to a deviation from this rule. His nephew, Abdul Latiff challenged the validity of the will. The Appeal Court of Selangor held that the will in question must follow the stipulated Islamic law of will. Other notable cases followed later such as the 1918 case of Saada v Hj. Abdul Rahman where it was held that under the concept of faraid, a testator is prohibited from delaying the vesting of an estate in his heirs and from leaving a direction in his will instructing the executors to deal with the estate for ten years and then distribute it.²⁴ In the 70's, the case of Amanullah v Hajjah Jamilah (1975)²⁵ is also worth looking at in the sense that the concept of one-third has remained intact; similarly to the case of the Shaik

Abdul Latif v Shaik Elias Bux, it was held that even if the will was validly made, and prepared under legal advice, it still conflicted with three basic principles of the law relating to the Islamic law of wills.²⁶ The main reason for rejection was the testator's purport to benefit one of his heirs to the disadvantage of others. Such cases are quite common among the people of Kuala Langat, the only difference being that most of the issues are not challenged and raised in the courts. Probably some waris did not have the financial capability to do so.

(b) Penama or the Issue of Nomination

Nomination or penama in the Malay language is another important element involving wasiyat cases. This aspect of the faraid process has become increasingly important, especially among individuals employed in the public and private sector. In straightforward cases where the nominee appointed is acceptable to all the waris concerned, the problem is minimal. However, if the individual concerned happens to be a controversial figure as perceived by the waris, then it is inevitable that problems will surface.

The appointment of a nominee has been practiced since 1900. Prior to this, villagers normally proposed

the person on the understanding that the others would agree. Similarly to what happened in the application of wasiyat, a nominee was usually appointed on the strength of his honest family background and being well respected in the village society. The people involved rarely brought up their discontentment to the authorities even if they reached a point of confrontation. Of course, there may have been some isolated cases where the negative aspects of the process did exist. Disagreements arose especially when the nominee appointed was a distant relative, which should not be the case under wasiyat. However as mentioned earlier, it seems that most of the problems were amicably solved through diplomatic persuasion and heeding the advice of the elders in the village. Even after the British came and the religious institutions were established, most of the villagers were reckoned to bypass the functions and authority of the district kathis appointed to deal with the problem. Probably they were sceptical about the abilities of the religious officials.

The period after independence witnessed the growing importance of nominees in deciding faraid cases. As the country developed and the structure of the civil services expanded, the issue of nomination came to the fore in the determining of rightful heirs to the deceased person's Pension, Employee Provident Fund (E.P.F.), Insurance,

Co-operative Funds, Post Office Savings and Bank accounts. Controversies began to arise with nominees who seemed to think that they were the beneficiary rather than the wasi or executor of a particular property or fund.

The situation became even more complicated in cases when the deceased person secretly nominated a second wife as the nominee for his property. As a result of this situation, it is inevitable that animosity and frustration among the waris (especially the first wife and her children) arose. Experience has suggested that the officer involved in this type of case frequently summoned the penghulu and district kathi for more detailed information, especially concerning the status of the appointed nominee. In most circumstances, after consultation with the officials, the decision made by the Assistant District Officer will attempt to satisfy both parties concerned. Such solutions will tend to be based mainly on humanitarianism and common sense. Even though under Hukum Sharak both wives have their own rights for the equal sharing of such funds (despite the man marrying secretly), usually the waris having a larger family will be favoured and the application of the concept of muafakat (agreement) ensures that the problems are minimised.

There is also another common problem involving those who have nominated their first wife as the beneficiary and later divorced her.²⁷ Having married for the second time, some individuals do not realise that there is a need for them to alter their nomination to the benefit of the present wife. After their death, the institutions responsible for the payments of the funds will pay all the benefits to the divorcee when by right, they should be paid to the present wife. Once payment has been made, it is very difficult for the waris to get it back, even with the intervention of the Assistant District Officer or Small Estate Officer. They can only advise the victim of such a situation about the measures that can be taken, i.e. to appeal to the High Court. This will undoubtedly cost a lot of money which in most instances the waris will not be able to raise.²⁸

In analysing the reasons for the refusal by some testators to nominate their immediate waris as nominee, from the writer's experience there appear to be four motives;

- (1) Gratitude and indebtedness to a particular person who cared for him in sickness and health.
- (2) Reservations about the loyalty shown by some children (especially sons who have migrated to big towns). To them, the son has neglected his duties of looking after his parent's

welfare. Some feel that the son has paid too much attention to his family and loves the wife more than the parents.

- (3) Fear that the property or funds left behind will be squandered.
- (4) Fear that personal differences and feelings of jealousy and suspicion will arise among the waris.

Apart from the feeling of insecurity and indifference shown by some nominators towards their waris, a fairly recent problem has surfaced which the administrators now have to cope with. This is the task of persuading nominees to accept the funds left behind. Although the number of such cases has been quite small, it is anticipated that they will increase, particularly with the rising Islamic awareness among the Malays. If the funds happens to come from pensions, the question of rejecting it does not arise at all, but if on the other hand, for instance, the funds come from sources such as insurance and gratuities paid to individuals working in companies involving haram activities and products, (as perceived by the waris), a major problem is inevitable. Through the writer's own experience, there are waris who either refuse to accept the funds or persuade others in the same category to reject them on the grounds that it is haram to do so. Such cases involved funds or benefits paid from those working in banks, finance companies

(regarded as ribā or usury) and more seriously in beer companies such as Carlsberg, Guinness and the Malayan Breweries Ltd, all of which happen to be located in Selangor. There are exceptional cases where waris are prepared to accept unwillingly out of financial desperation but as for those who completely rejected them, the writer did suggest to the waris concerned that it was preferable that the money should be channelled to the baitulmal rather than then going back to the company. Although these type of cases are quite rare, thought must be given to the changing trend in the attitude of the villagers and the increasing commitment to Islam.

The problems posed by the question of the legal nominee finally attracted the attention of the Federal government, which at present has a civil service payroll of 900,000 employees. An effort to remedy the situation was made by the Majlis Kebangsaan Hal Ehwal Ugama Islam, Malaysia (National Council on Islamic Affairs of Malaysia) through its Fatwa Committee) which is appointed by the Rulers in Council, and on September 1977, the following suggestion was made to the various state governments;

...nominees for funds such as Employee Provident, Post Office Savings, Insurance, Savings in Banks and Co-operative Society must only be regarded as

wasi or executor. Distribution of funds from these sources must be in accordance with the rules of faraid...'29

Along with the above suggestion, the Attorney General's Department also advised state governments to make the necessary provision in its Religious Enactment.³⁰ Ironically, only the state of Malacca (one of the two states in the country not headed by a Sultan, the other being Penang) incorporated the suggestion into its Religious Administration Enactment. Under the revised Enactment, the Malaccan state government distinguished further the meaning of a nominee as follows;

'any person nominated to receive monies payable on the death of the nominator under any law, shall receive and hold the monies for the benefit of the estate of the nominator and shall pay the monies to the executor or the administrator of the nominator, as the case may be, and the executor or administrator shall distribute the monies in accordance with Muslim law:
Provided that for the purpose of the distribution of the assets of the estate of the nominator in accordance with Muslim law, the monies payable under the nomination to the nominee shall be deemed to be a bequest in favour of the nominee by a will duly made by the nominator' .³¹

The lethargic attitude shown by most state governments to the suggestion made by the Rulers in Council prompted the Body to raise the matter again in its annual meeting in 1980. At this juncture, the

recommendation made seems to have been more stringent on the question of nominees. The Council made two resolutions in the final day of its meeting, namely;

- (1) The Council reminded the state governments that as far as Muslims are concerned, they are prohibited to appoint a nominee.
- (2) The Council agreed that the Attorney General should draft the necessary regulations prohibiting Muslims from appointing a nominee.

These suggestions seem to have been well received, but they were not effectively implemented by the various state governments. The main reason is probably the lack of coordination between the departments involved and moreover the fact that the majority of waris are still wedded to the concept of "nominee appointment".

Although the appointment of a nominee sometimes creates hindrances to the process of faraid, it must be borne in mind that it does have some positive aspects. When there is a nominee, a particular fund can be easily withdrawn without requiring letter of authority from the courts. As pointed out by Professor Ahmad Ibrahim, it would be a good idea if the Muslims were permitted to nominate nominee (A) whilst safeguarding the interest of nominee (B).³²

(c) The Concept of Faraid

Some laws which have a bearing on the working of faraid in Selangor have been discussed in previous chapters. The system of faraid together with baitulmal appears to have existed at least as early as 1874,³³ and we have surveyed the situation before the coming of the British, during their rule and in the post independence era up to the late 1960's.

Certain aspects of Malay land law which affect the operation of the Islamic law of inheritance, especially where the clash between Islamic law and adat are concerned, have also been cited. It is the adat which has contributed to the numerous problems in the workings of faraid. Some problems in the implementation of the law have been briefly spelt out.

Before proceeding to a discussion of the practical operation of faraid in Selangor, it is necessary to give some definitions and a brief account of the Islamic legal theory of faraid according to the Shafi'i madhab. Since the main Shafi'i law-book in use in Selangor is the Minhaj-at-Talibin by Nawawi³⁴ and in fact this book has been the main source of reference by the Selangor Religious Department since the Department was officially

established in 1952, the following discussion will be mainly but not exclusively based on his work.

The law of inheritance in Islam, known as 'Ilm al-Farā'id', can be defined as a 'science dealing with the law pertaining to the devotional acts based on the shariah in respect of the wealth of a person after the certainty of his or her death or on the assumption of his or her death.'³⁵ Inheritance itself in Islam is known as mīrāth, which in legal terminology means 'inheritance to be divided from the property of the deceased among his successors'.³⁶ The law calls for an explicit thorough knowledge of Arithmetic because of the methods adopted in calculating or working out the various shares or residues for the inheritors of the estates left behind. According to Coulson, the supreme purpose of faraid is material provision for surviving dependents and relatives, for the family group bound to the deceased by the mutual ties and responsibilities which stems from blood relationship.³⁷ In any discussion of the need for an individual to have a sound knowledge of mathematics when dealing with faraid, the name of Zayd b. Thābit needs mentioning. During the lifetime of the Prophet Muhammad S.A.W., this individual's knowledge of the subject surpassed that of everyone else. The Prophet said; 'Zayd is the best of you in Faraid' because Zayd was the most accurate and the quickest in giving answers on the subject.³⁸

According to Nawawi, in the Shafi'i view the grounds for legitimate succession in faraid are four in number - relationship; marriage; patronage, in the sense that the patron is heir to the enfranchised slave, but not vice versa; and, finally, religion, for in default of heirs of the first three kinds, the inheritance passes to the state, and this acquisition has all the effects of an ordinary succession.³⁹ Nawawi listed ten male heirs and seven female heirs as legitimate successors to an estate. These are;

Legitimate Male heirs

- (1) son;
- (2) son's son and other agnate descendants;
- (3) father;
- (4) father's father and other agnate ancestors;
- (5) brother;
- (6) brother's son;
- (7) father's whole brother, and father's half-brother on father's side;
- (8) son of (7);

(9) surviving husband, not divorced, who has not repudiated the deceased and,

(10) patron.⁴⁰

As for the female legitimate heirs, these are seven in number. They are as follows;

(1) daughter;

(2) son's daughter, and other female descendants of a son, provided they are agnates;

(3) mother;

(4) grandmother, and other ancestresses mentioned in Section 5⁴¹;

(5) sister;

(6) surviving wife, not divorced nor repudiated;

(7) patroness.⁴²

In relation to the various portions allocated to the legitimate heirs as stipulated in the Qur'an, Sūrat al-Nisā', iv 11-12, Nawawi gives a detailed account of the six categories;

(1) Half the estate is assigned to five individuals. They are (a) husband, if the deceased has left no children nor son's children; (b) only daughter; (c) son's only daughter; (d) only whole sister; (e) only half sister on father's side.⁴³

- (2) A quarter of the estate is assigned to:
 (a) husband, if the deceased has left children or son's children; (b) wife, if the deceased has⁴⁴ not left children nor son's children.
- (3) An eighth of the estate is assigned to the wife, if the deceased has⁴⁵ left children or son's children.
- (4) Two-thirds of the estate are assigned to: (a) two or more daughters; (b) two or more daughters of sons; (c) two or more whole sisters; (d) two or more⁴⁶ whole sisters on the father's side.
- (5) A third is assigned to: (a) mother, if the deceased has left no children nor son's children, nor two brothers, nor two sisters; (b) two or more brothers or uterine sisters; (c) father's father when called to the⁴⁷ succession along with the brothers.
- (6) A sixth is assigned to seven individuals. They are (a) father, if the deceased has left children or son's children; (b) father's father, under the same circumstances; (c) mother, if the deceased has left either children or son's children, or brothers or sisters; (d) grandmother; (e) son's daughter, when she is called to the succession along with the deceased's daughter, i.e. her father's sister; (f) one or more half sisters on the father's side called to the succession along with the whole sister; (g) brother,⁴⁸ or only uterine sister.

Nawawi also illustrates the dominant part played by the male in all forms of the inheritance process. To him, father, son and husband are never excluded from the succession.⁴⁹ The son in particular is a universal

inheritor, when he alone is called to the succession, and this principle applies also where the deceased leaves several sons.⁵⁰ However, an only daughter can never claim more than half, nor two or more daughters more than two-thirds.⁵¹

(d) The Practical Administration of Faraid
in Selangor

In this section of the thesis, emphasis will be placed mainly upon the administration of faraid in the state especially in the 70's. It is hoped that the actual experience of the writer while working in the district of Kuala Langat will throw some light on the real problems of carrying out this particular law. Views from other individuals involved in the process such as the District/Small Estate Officer and the district kathi will also be discussed.

The nerve centre for the administering of faraid in the state, as seen earlier, lies with the two district institutions of the district/small estate office and the district religious office (pejabat agama daerah), commonly known among the rural population as pejabat kathi). The majority of the Malays in Kuala Langat, as in other parts of the country, live in the suburbs and the rural areas. Kuala Langat is one of the most developed

districts in the nation with an excellent infrastructure and system of communication. It is in such rural areas that the transaction of faraid took place with the district office playing its role as the official administrator. In 1969, legal and religious officials together with the administrators dealing with Malay land appeared to realise that the time had come for them to make a serious effort towards the better working of faraid, a better system of wakaf and collection of baitulmal and other religious issues affecting the Muslim population. Initially their approach to this was somewhat hesitant, but this attitude changed when calls were made at a major conference⁵² by influential ulama and legal personalities to adopt a more positive approach to the subject. Papers presented at this conference, especially those dealing with faraid,⁵³ can be regarded as a real encouragement to those administering Malay properties. It was time for them to ponder and plan effectively in order to streamline the law. Although the conference was organised by the Federal government, the state governments understandably perceived it as an indirect message to them to put their land and religious machinery into proper order. Land and religion under the Federal Constitution of Malaysia are state matters, but the conference did exert some pressure on these state governments and Selangor was no exception.

Again it must be emphasised that in Selangor, the implementation of faraid is mainly dealt with by the officers of the district administration and the district kathi. Their roles in this capacity depend on one another, and the state government relies a great deal for the effective working of the Islamic land law on these institutions.

To remind ourselves what constitutes "a small estate", this can be defined as tangible and intangible assets such as money, shares and employees provident fund (for those working in the public and private sector) left by deceased Muslims who did not make any wasiyat (will). The value of the assets must be less than M\$300,000/.⁵⁴ The government had anticipated that by laying down this amount it would ensure that every Malay property of the sort it had in mind fell within the prescribed figure. From past experiences of the writer in the district of Kuala Langat, nearly all the cases which warranted the application of faraid involved properties valued at less than M\$300,000/. However, the definition of "a small estate" will not be applicable if the deceased person leaves only tangible assets. Therefore it must be a combination of both tangible and intangible assets for the situation to be categorise of as "a small estate".

Prior to 1974, most of the faraid cases involving Malay land properties in the district were handled by the Assistant District Officer (commonly known by the abbreviation A.D.O.) in charge of land. He was responsible for assessing the information about the properties of the deceased and the waris involved, which was initially acquired from the registered land title (the location, the acreage, and the status of the land, whether it was Malay Reservation, Leasehold, Freehold or most important of all, hereditary land). The most important source of the information that the officer had to acquire, however, consisted of two individuals, namely the ketua kampong (village chief) and the penghulu (mukim headman). These individuals are more knowledgeable about the deceased's family background and his relatives, and in fact their information can be regarded as reliable.

In making their claim, the heirs must first submit various items of information to the officer through a special form (Borang A) which is freely available from the district office. Notable information required is the name of the deceased, the status and names of the waris, the type of tangible and intangible assets left behind, the lists of debts incurred during the lifetime of the deceased, the names of the creditors and finally any other beneficiaries who in the opinion of the penghulu can qualify as waris. This latter question can prove to

be very complicated and sometimes gives the officer serious problems especially if the property in question will bring considerable profits to the waris. According to a retired penghulu⁵⁵ in the 1950's and 60's this question give rise to fewer problems, largely because people were less inclined to litigation. As the Malays have grown more affluent, however, they have become much more ready to resort to the various legal services provided either by the government or private solicitors. These problems will be discussed in the later part of this section.

In addition to the above information needed by the district office, the waris must also submit a copy of the death certificate issued by the religious department and a letter of oath from two witnesses who have attended the funeral. In such cases as those killed during the Japanese occupation or the tragic racial riot of 1969 or the Javanese, Mandeling and Minangkabaus who onced lived in Selangor but left the country and died in Indonesia, a letter of presumption of death issued by the High Court must be produced.⁵⁶ With reference to the Kuala Langat district, few caes of faraid involving the first two types of deaths were heard. There are on the other hand a considerable number of cases involving Javanese people who have left the district and died in Java. This is because historically there has been a very large number

of Javanese who opened up or owned lands in most areas of the district. Other districts like Ulu Langat and Ulu Selangor also experienced the same situation, except that Minangkabaus and Mandeling dominated. Finally, the waris to the property must also submit copies of documents involving tangible assets such as share certificates, post office savings book and the income statements of the employees provident fund. As can be seen later, the contents of the employees provident fund information is equally important because it give the name or names of the waris who is or are eligible to make the claim.

It must be said that not everybody in the family can make a claim to a particular property. In order to avoid undesirable complications and to cut down unreasonable interference from distant relatives, most officers will always look at the interest of the immediate waris. Of course this does not mean that the claims of those who can claim under the Islamic law of Inheritance are completely disregarded. In carrying out his duty, the officer will draw on the advice and guidance of the district kathi together with his assessment of the economic value of the land. Experience has shown that in most cases involving small pieces of land (1-3 acres), distant relatives will abandon their interest, and very few will wish to pursue their claims further. Moreover, to avoid land fragmentation,⁵⁷ the officer in practically

all cases would use his diplomatic persuasion to ensure that the land remained intact, since if subdivision does occur, it is inevitable that the land will be uneconomical to exploit. Thus it can be said that the officers are more concerned with land viability than with satisfying the personal interest of the waris. But having said this, it is not necessarily the case that advice given by the officer will be heeded. In most straightforward cases, where the waris are able to decide rationally, the problem is minimal, but there are a number of cases where a stubborn waris refuses to budge. These negative aspects will be discussed in the section dealing with the problems encountered in implementing faraid particularly in Kuala Langat.

Some other suggestions which the officer might make also merit consideration, since similar situations arise from time to time in other districts and in other states. Among popular suggestions put forward is the possibility of setting up a family cooperative or erecting a small building for the good use of the land. The profits derived from this type of venture will either be divided according to the shares stipulated under the rules of faraid or can be ploughed back into the programme for long term development. Though the suggestions look impressive, in real terms the shortcomings are very considerable, and furthermore such an idea tends to

receive a cool reception from the families involved. Perhaps the mechanics of the operation of such a scheme are hard to understand since most of the waris have little education and the question of cash is more important to them. In addition they probably lack the financial ability to erect a building on their land. No doubt there are financial institutions in the district such as Commercial Banks and the Agriculture Bank (Bank Pertanian) which will help the farmers in the area, but their policy is to provide loans only for agricultural purposes. Even if the financial problem is solved, the question of getting the green light from the local council and planning authority still remains. Most of the land involved is either logistically unsuitable for the erection of a building or the title states specifically that it is mainly for agricultural purposes. Sometimes, when the situation looks hopeless, officers tend to advise the waris simply to hand the land over to the religious department as baitulmal. Quite a number of them tend to agree, especially those who have an established and prosperous situation in society, since it is a way to get blessing from Allah for giving a form of sadaqah (charity). Those who are not so fortunate will pursue their cause hoping that in the end they will get their rights under the system of faraid.

(e) Duration and Procedures Taken to Process
a Faraid Case in Selangor

A hypothetical study has revealed that the time taken to process a particular faraid case in most districts in Malaysia is approximately four months and two weeks.⁵⁸ Even then, the study was carried out on the assumption that it was being applied to a straightforward case, i.e. one involving only the immediate waris (wife/husband and the children).

According to the study, ten procedures were identified before a particular faraid case can be completed. An analysis of these procedures will be given in this section of the thesis. The writer is of the opinion that the time factor is a very important element in determining the smooth and efficient running in the administering of faraid.

(i) Procedure One.

This has been briefly discussed earlier. In this situation, the Assistant District Officer/Small Estate Officer will accept the application Form A (Borang A) from the waris concerned.⁵⁹ Application can also be accepted by the officers from creditors of the deceased

person, the penghulu or the official trustee of a particular piece of land.⁶⁰ Information required to be submitted are copies of the following;

- (1) death certificate of the deceased person.
- (2) the land title, usually to be certified by a second class magistrate or equivalent.
- (3) sale and purchase agreement of the land.
- (4) statements of debt incurred.
- (5) Identity cards of the waris and relevant witnesses especially to certify the identity status of the deceased person. This is very important because in some cases (certainly in the district of Kuala Langat) the name of the person may be differently spelt from what appears on the land title. Thus it is sometimes a problem to ensure that the right name tallies with the right person. For example, in common variations in the spelling of Malay names Muhammad becomes Mohd, Yusoff becomes Yusop, Dollah becomes Abdullah or, to give examples of female names, Aishah becomes Esah and Khatijah becomes Tijah.

(ii) Procedure Two (3 Days)

Once the application form has been received, a new file will be opened. The clerk in charge will transfer the information to Form B (Borang B). Acknowledgement of the submitted application form will be sent immediately to the waris concerned.

(iii) Procedure Three (3 Weeks)

The third procedure involves the investigation of the land title conducted by the Settlement Officer from the district office and the penghulu of the village where the land is located. In Kuala Langat, the process of investigation is sometimes hampered by a shortage of staff and time. As the district embarks upon the opening of new land schemes, the attention of the officials in the district office, especially the settlement officers, is focussed on the development of these lands. New land schemes in the district normally involve the transforming of thousands of acres of swamp land or virgin forest into agricultural areas suitable for farming. Such schemes are the Revolusi Hijau (Green Revolution),⁶¹ Rancangan Tanah Belia Bukit Changgang (Youth Land Scheme of Bukit Changgang)⁶² and the two land schemes opened for the public namely Rancangan Tanah Bukit Perah dan Lubok Hantu (Bukit Perah and Lubok Hantu Land Schemes).⁶³ With a limited amount of manpower available to assist the settlement officers to sub-divide the land into plots of 3 acres, these officers take a long time to complete their assignments. As a result of this situation, a particular faraid case submitted for investigation can sometimes be held up on the officials's desk. Although hypothetically the time taken to investigate a piece of land (even if it is a small plot)

by the Settlement Officer is approximately 3 weeks, in Kuala Langat and other districts which have their own land scheme programmes, the process can take longer.

(iv) Procedure Four (1 Month)

The reports and information acquired from the settlement officer and the penghulu on the land will be submitted to the district kathi who will determine the faraid shares. Although it is difficult to imagine that a kathi could take as long as a month to decide the faraid shares, this has become the situation in almost all the districts in Selangor. In recent years the situation has deteriorated further so that the kathi will take even more than a month to decide the faraid shares. The main reason for this situation is apparently the increase in non-religious duties that the kathi has to perform. This departure from his original role is inevitable, as religion is becoming more and more politicised at the grassroots level. There are non-religious activities where the presence of the kathi is compulsory, such as the opening of a new school or poly-clinic by a local politician, community gatherings and sporting and youth activities. As a result of this busy social round, the kathi is seldom at his office where he should be perusing the faraid files submitted to him from the district office.

(v) Procedure Five (1 Month)

Under Section 8(2) of the Small Estate Distribution Act, after receiving all the necessary information the officer will submit this to the Registrar of the High Court before a hearing can be held. The object of this is to check whether this particular case has already been forwarded to the High Court by other interested parties. In the event that an application has already been made, the officer will get the notification from the Registrar's office through Form C (Borang C). It is the duty of the officer then to inform all waris concerned about the decision of the court and he is empowered to suspend any further hearings or transactions concerning that particular case. If no application has been forwarded previously, then under Section 8(9) the officer can proceed with the hearing. Another important consideration that the officer must take into account is whether the value of the land in question falls within the status of a small estate. If the value exceeds M\$300,000, the case will be transferred to the High Court and the officer will cease to handle it. Procedure 5 normally takes more than a month to complete, especially when dealing with a legal institution like the High Court. The main problem likely to delay a decision is that of an excess of red tape.

(vi) Procedure Six (1 Month)

As stated above, if the decision of the High Court sanctions the officer to proceed with the hearing, he will arrange the date and the place. Form D (Borang D) will be dispatched not only to all waris but also to the creditors of the deceased person, who seem to be involved in nearly all faraid cases. Copies of the notices will also be exhibited in public places such as the balai raya (community halls) and the balai penghulu.⁶⁴ The main problem confronted by almost all officers dealing with faraid is to get the notices served to the waris in time (not more than 30 days after the date of the hearing has been fixed). Only too often, the waris will move from one place to another without leaving their new address. The situation will be more complicated if the waris have moved not only outside the district but also to another state. The majority of notices served are in fact returned to the district office because it is very difficult for the penghantar notis (notice server) to locate these people.⁶⁵

During the hearing, an advocate or a solicitor is not allowed to be present for a particular interested party except with the consent of the officer presiding over the hearing.⁶⁶ Even if this consent is given, the advocate is prohibited from charging legal fees if the

value of the land in question is less than M\$3,000.⁶⁷ Regulations laid down for the hearing also include the following;

- (1) The place of the hearing must be easily accessible to all parties concerned.
- (2) All statements recorded must be taken under oath.
- (3) A detailed investigation must be carried out by those involved.
- (4) The penghulu can be summoned at anytime to certify the status and background of a waris.
- (5) The officer handling the hearing can ascertain as may be most appropriate, the laws applicable to the devolution of the estate of the deceased. He can decide who in accordance with that law, whether adat⁶⁸ or faraid, are the beneficiaries and the proportions⁶⁹ of their respective shares and interest.

In case of collateral disputes during the hearing, in the interest of justice the officer may defer the making of any distribution order in respect of the estate. Under Sect. 14(1) of the latest edition of the Small Estate Distribution Act 1955 and Regulations (act 98),⁷⁰ a 'collateral dispute' means a dispute as to whether;

- (1) any property movable or immovable or any right or interest in any such property forms part of the estate of the deceased;⁷¹

- (2) any person is entitled beneficially to any property movable or immovable or any right or interest in any such property which the deceased at the time of his death held or was entitled to hold as a trustee and not beneficially;⁷²
- (3) any debt or liquidated sum in money is payable to any person claiming the same out of the assets of the deceased or any debt or liquidated sum in money is due or payable to any⁷³ person by the estate of the deceased; and
- (4) any share or any right or interest in any share of a beneficiary in the estate of the deceased has been assigned to or vested in any other⁷⁴ person, whether a beneficiary or not.

Theoretically, the process of hearing takes a month to complete although from past experience this is not possible in practice. To confirm this statement, the writer interviewed the present Small Estate Officer of Kuala Langat.⁷⁵ She indicated that from her eight years' experience in the district, it takes an average of two months for an ordinary hearing to be completed. It is also astonishing to learn from her that a particular faraid case⁷⁶ which was supposed to be heard in 1971 was never proceeded with. Instead after a lapse of fifteen years the case was finally heard by the officer herself. According to her, the main reason for the delay was the failure by the district office to serve the notices to the waris concerned who kept changing their addresses. A total of twelve notices within a space of seven years

were sent (1971-1978) but there was no response. By 1978, the district office had given up trying to trace the waris. In 1986 the case was brought to the fore again as a result of an application received by the officer from MARA (a statutory body set up by the Federal Government to help the Malays in commerce and education) to settle the case. It happened that the title of the property in questioned was held by MARA because one of the waris had secretly mortgaged half of the land to this institution. When the hearing was resumed other waris insisted that the other half of the land should be sold and the proceeds given to the state baitulmal. The reason for this was that the area of the land was too small to be distributed according to the faraid, while even if this was done, the land would be utterly fragmented. The above case is one of the many that the officer encountered while carrying out her duties in the district.⁷⁷

(vii) Procedure Seven (2 weeks)

This procedure concerns the distribution order made by the Assistant District Officer. The form used is Borang E. The order will be lodged in the officer's office and fourteen days' notice of appeal is allowed to the waris . It will continue to be with the officer until the appeal (if there is one) has been, decided or withdrawn.⁷⁸ In making the distribution order, there are

two issues that the officer should consider. The first is the question of a beneficiary who may be a minor or a person not of full capacity, and the second is whether there is evidence of a collateral dispute. As far as safeguarding the interest of a particular minor is concerned, the officer shall by his order direct the share of the child in question in any immoveable property to be registered in the name of a suitable person as trustee. In addition he can also enter a caveat⁷⁹ for the child to protect his interest during minority. If the child has attained majority, the officer can either withdraw the caveat to enable the trustee to transfer the interest to the beneficiary⁸⁰ or he can make an order transmitting the interest from the trustee to the beneficiary as proprietor.⁸¹ In the event of a collateral dispute, the officer can still proceed to hear and determine the dispute and make such order thereon as he may deem just.⁸² There is also another consideration that the officer has to take into account. In making such an order for distribution, he must make sure that;

provision has been made for the payment out of the estate of the estate duty, if any, and of the funeral expenses and debts of the deceased, wherever arising, and for the repayment to any person of any fees by that person under this Act (Small Estate Distribution) and may, if necessary, direct the whole or such part of the estate as he may specify to be sold and the expenses, debts, fees and duty to be paid from the proceeds of the sale and subject thereto and to the following provisions of

this section shall distribute the residue of the estate according to their respective shares and interests among the beneficiaries but subject to section 15:⁸³

Provided that where there is in force any written law relating to baitulmal the officer shall before distributing any part of the estate of a deceased Muslim satisfy himself that any share of the estate which is due to baitulmal has been duly paid or proper provision made for the payment thereof.⁸⁴

(viii) Procedure Eight (2 weeks)

After the process of distribution, some waris may not be satisfied with the decision made by the officer. Under Section 29 of the Small Estate Distribution Act, any person aggrieved by any order, decision or act made or done by an officer making the decision may appeal to the High Court.⁸⁵ The time allocated for the waris to make their appeal is 14 days. In all cases, the decision of the High Court upon any such appeal shall be final. There will be no further provision made for any further appeal.⁸⁶

(ix) Procedure Nine

This procedure involves the answer given by the High Court to the waris concerning their appeal. The only problem associated with this procedure is that of getting a quick decision from the court. As in procedure five, bureaucratic delays contribute here to delay in receiving

a decision from the Registrar's office in Kuala Lumpur. Sometimes, to speed up the process, the officer will personally collect the faraid files from the office of the Registrar in the country's capital city.

(x) Procedure ten

Finally, the process ends with the registration of the title of the property into the Registration Book of the Land Office. This can only take place after the High Court has delivered its final judgement, in cases where this body has been involved.

From the analysis given above, it can be seen that though the time taken to process a particular faraid case is theoretically approximately four months and two weeks, this is certainly not the situation in the district of Kuala Langat. Procedures three and four are the principal causes of delay in the progress of some notable faraid cases in the district. Unless necessary steps are taken to remedy the situation, the picture will continue to be the same. Such possible steps will be discussed in the final chapter of this thesis.

(f) Problems Associated with the Implementation of Faraid in Selangor

(1) Administrative Perspective

In the preceeding analysis of the workings of faraid in Selangor, we have mentioned some of the problems involved in implementing this Islamic law. In the following section, there will be a comprehensive discussion of the same issue. The problem may be examined from two perspectives, the administrative and the social.

One of the most explicit administrative problems confronted by Small Estate Officers is the increase in responsibility that they have to shoulder. In Selangor, there are only four such officers covering the nine districts in the state, each being responsible for at least two districts. The Small Estate Officer in Kuala Langat for example has to deal with faraid cases in Klang district and sometimes also in Kuala Selangor and she has to shuttle between these two districts (the distance between the districts is approximately 30 miles).⁸⁷ Requests have already been made by these officers to the Federal government for additional staff to cope with the backlog of faraid cases in nearly all districts. The problem of staff shortage involves not only senior officers but also the lower ranks of the administration.⁸⁸

In Kuala Langat district there was only one clerk, a typist and an office boy to handle all the distribution cases in the district. The officers have further voiced their resentment about the lack of sufficient clerical staff for output and efficiency to reach a satisfactory level in the Small Estate Office. The negative attitude shown by the Federal Public Services Commission in reacting to requests made by the officers has made the situation no easier.⁸⁹ The reason given for this negative response by the Commission is the low priority given to the Small Estate establishment. Moreover, the Commission argued that the state governments should be able to provide additional staff recruited through the State's Public Commission. In simple terms, they were hoping to shift their responsibilities to the state governments.

Besides the shortage of staff at all levels confronted by the Small Estate Officers, there is also the problem of inadequate administrative and legal training provided not only to these officers but also to district kathis, as mentioned in Chapter 2. Prior to their appointment as Small Estate Officers, they were given only a month's training at the headquarters in Kuala Lumpur.⁹⁰ This is a very short period indeed, especially as most of them have little knowledge of land law, let alone the concepts and workings of faraid. As a

result, in cases of collateral dispute for example, the officer who has no practical experience in dealing with this type of case will be in an awkward situation, when he comes to deal with faraid cases in practice. The only solution to the problem would seem to be the setting up of a programme sending these officers to attend Diploma or other courses which are relevant to their work. Steps need to be taken not only by the Federal but also by State governments to provide scholarships and in-service training at the International Islamic University in Petaling Jaya or INTAN (National Institute of Public Administration in the same town). It seems illogical that officers selected by the Public Services Department to be appointed as Pegawai Tadbir Diplomatik, are sent initially to INTAN for one full year with all facilities and full pay to some officers on the grounds that these officers will be serving the public, while at the same time the important role of the Small Estate Officers at the grassroot level seems to be ignored.

Another common problem experienced by Small Estate Officers and kathis is the inadequate provision of office facilities such as office space, of a strong room to safeguard the secrecy of information, steel cabinets or even an adequate number of chairs. These chairs are very important, since they are needed for the waris and their relatives to sit while a hearing is being conducted.

(waris normally bring the whole family and relatives even if some of them are not involved in the hearing). In some offices, as a result of insufficient chairs, some of those attending the hearing had to stand until the hearing was completed. Fortunately, the situation in the offices of the district kathi and the Small Estate Officer in Kuala Langat is quite good as compared to similar situations in other districts, especially in the east coast states.

An additional dilemma which continues to surface is the failure to ensure an efficient administrative coordination among the three institutions involved, the district office, the office of the kathi and the Small Estate Office. Most of the Small Estate Offices are located within the same complex as the district office, and thus the logistic problem is non-existent. However the relationship between the Small Estate Officer and the District Officer seems to be uneasy at times in the sense that each feels superior to the other, especially the latter. Moreover the question of accountability is taken seriously by both parties. Those in the district office assume that they are accountable to the state government whereas the Small Estate officials feel accountable to the Director General for Lands and Mines in Kuala Lumpur. Some District Officers even look upon the Small Estate Officers and the district kathis as an

inferior officer of the government. Perhaps the most glaring example of lack of integration among these institutions is the fact that Small Estate Officers are not invited to attend the monthly District Action Committee Meeting (Mesyuarat Tindakan Daerah). This meeting is held in the District Operation Room of the district office and is attended by all heads of department in the district. When an issue on faraid is raised, normally by the local politician (wakil ra'ayat), either the Assistant District officer in charge of land or the district kathi will give the information required. Sometimes the information given is inaccurate because the matters raised need to be explained by the Small Estate Officer, whose information is more relevant in giving the true picture of the situation.

When both the District Officer and the Small Estate Officer are attempting to clear the backlog of faraid cases, the situation frequently reaches stalemate, again because of the lack of effective coordination and communication between the two sides. In most cases, the Small Estate Officer needs much vital information from the district office, especially documents kept in the strong room. Nevertheless, this information is difficult to acquire, especially when dealing with cases which go back to the 1950's. Some cannot be traced and even if

they have been kept safely in the strong room, they are either partly damaged or unsystematically documented.⁹¹

Supplementary problems associated with the implementation of faraid at the district level arise from the poor system of communication between the offices of the Small Estate and the district kathi with their respective headquarters. As far as the situation in Selangor is concerned, the system of communication is generally quite reliable, and the problem of getting a quick response and vital information from the headquarters is minimal. Probably the districts of Ulu Selangor, Sepang and Sabak Bernam are the only districts in the state which have some difficulties in this aspect. The distance of these districts from the state capital in Shah Alam is the main reason for such problems, and in addition there are not many telephone lines serving these districts. As a result Small Estate Officers or district kathis face problems of getting clear advice or information from their respective main offices in Shah Alam. The telephone lines are always busy and even if they can get through, the lines may be unclear. In other states, the situation may be worse, especially in remote districts where the system of communication is relatively unsatisfactory.

Finally, the most important problem facing all officers dealing with faraid, in the opinion of the writer, is the drafting of the Small Estate Distribution Act of 1955 itself.

If we look at the contents of the Small Estate Distribution Act of 1955, we see that changes are overdue. Calls have already been made⁹² and memoranda presented by those involved in the implementation of the Act drawing attention to its outdated nature. It needs to be ammended in order to reflect the rapid economic growth of the country and the changing role of village land. Among the sections that needs to be rectified is the area of jurisdiction so that an officer has the power to act on the spot on a particular faraid case. At the moment this is a 'grey area' in which certain officers seems to be at a loss as to whether or not to make a decision. Most situations of this kind involve wasiat or harta sepencharian transactions. Although the normal procedure is for the officer to get in touch with the district kathi for his comments, there are occasions when it would be better for him to decide on the spot in order to save time. The Act as it stands only stresses the importance of property distribution and how it should be done. There is no mention of wasiyat or harta sepencharian, which is equally important in deciding faraid cases. If the

officer had some general knowledge of faraid, and if the necessary provisions existed under the act, there would be a possibility of shortening the process in straightforward cases of faraid, since advice of the district kathi would no longer be needed. There is also the problem that the Small Estate Officer cannot legally summon waris who refuse to attend or co-operate in a hearing.⁹³ Provision under the Act is required to give the officers such powers.

As for the maximum value of the property covered by the Act, the time has now come when this should be raised from M\$300,000 to M\$600,00. The main reason for this is the sharp increase in the value of Malay land holdings in recent years. There is also the need for an increase in the application fee of M\$2.00 which has not changed since the Act was enacted in 1955. It is absurd that the state governments should impose a minimum fee of M\$2.00 while the value of the land to be distributed has soared to an average price of half a million ringgit. (M\$500,000).

In February 1985, a working paper was presented to the Minister for Land and Federal Territory Development.⁹⁴ The paper was produced as a result of suggestions made at two seminars, Seminar Pegawai Pesaka Kecil in Morib , Seminar Faraid Kebangsaan held at the National University of Malaysia, and more importantly the

proposal taken from the Federal Land Council Conference held on the 25/3/1983.⁹⁵ The Minister agreed in principle to the resolutions but insisted that there must be a provision for a 'time frame' for the waris to put in their application (he suggested 3 months) before such a proposal is adopted. Among the Amendments proposed⁹⁶ were the following sections;

Section 3(2)

'For the purpose of this Act, a small estate means an estate of a deceased person consisting wholly or partly of immovable property situated in any state and not exceeding six hundred thousand ringgit in total value'⁹⁷

Basis for amendment

The value of most Malay land holdings, especially village land, has risen sharply in the last few years. These lands are mostly affected as a result of the extension of the town council boundary limits. The status of these lands thus changes from country land to town land.

Section 12(9)

'At any time before the making of a distribution order the Collector may reopen the hearing for the purpose of taking further evidence on any relevant matter.'⁹⁸

Basis for Amendment

The idea is to allow the officer to make a discretionary decision on whether to reopen a particular hearing to ensure enough evidence before making his decision. He need not seek the permission of the state Director of Lands and Mines which is a common procedure in any judicial hearing.

Section 12(10)

'Where the Collector who is conducting any hearing of a petition under this section dies, or is unable through illness, transfer or any other cause to exercise his functions under this Act, any other Collector may continue with the hearing or re-hear the whole or part of the evidence already taken or carry out any other function, under this Act in relation to the petition.'

Basis for Amendment

This is an important proposal because the officer may suddenly pass away, fall ill or be transferred in an emergency situation (very common occurrence in a district especially if a local politician disagrees with a particular officer, who can be transferred within 48 hours), thus leaving the case 'hanging in the air'. With this amendment, any officer holding a similar post will be able to proceed without much delay.

Section 13(4)(1)

'Provided that where the estate of the deceased includes any land or any interest in land situated in West Malaysia no grant of letters of administration shall be made to a non-citizen or a foreign company within the meaning of section 433A of the National Land Code if such non-citizen or foreign company is not capable of being registered as 'representative', or if a memorial in favour of such non-citizen or foreign company as representative' is not capable of being made under Part Thirty-Three (A) of the National Land Code.'

Basis for Amendment

This is important as far as the district of Kuala Langat and other districts which have a Malay immigrant population are concerned. It will enable the officer to deal with legal personal transactions while avoiding the problems of non-citizen participation and financial transactions.

Among the new sections to be included under the proposed amendment was the following;

Section 11(A)

'The Collector shall, in relation to the hearing of a petition for distribution, have all the powers of a Magistrates' Court in the exercise of its civil jurisdiction for the summoning and examination of witnesses, for the administration of oaths or affirmations and for compelling the

production and delivery to him of all documents, including issue documents of title and other documents evidencing title.'¹⁰¹

Basis for Amendment

This is a very important amendment indeed as it will solve the problems of Small Estate Officers in dealing with waris who have an apathetic or tidak apa attitude. The proposal confers upon the Small Estate Officer the powers that District Officers, Magistrates and Police Officers have under sections 174 and 175 of the Penal Code to summon the waris to appear before him.

Not all proposals submitted to the Minister were given the go-ahead by the Attorney General's Department. Two such proposals which were clearly rejected are found under Section 8 and Section 15. As far as Section 8 is concerned which deals with the 'time frame' of three months given to waris to make their application for distribution, the Department held the view that it interferes with the right of an individual to act on his own free will. This is against the Constitution of the country and it was suggested that the amendment should not be considered. Section 15 which deals with the interest that a waris has to pay should also be abolished according to the Attorney General. This is in accordance with the efforts made by the Prime Minister's department

in the Islamization process of the civil service. More importantly he argued that it is contradictory to Section 8(2) of the Federal Constitution, which has a bearing on the whole concept of public law.¹⁰²

From the above discussion on the efforts made to amend some sections of the Small Estate Distribution Act, it is clear that nearly all the proposals appear to recommend more powers for the officers. In addition the waris may no longer adopt a lethargic attitude towards the workings of faraid. However, it remains to be seen whether these proposed amendments will convince the Malaysian Cabinet in particular before being brought to Parliament to be debated.

(2) Social Perspective

The effective working of any faraid case can be considered to be partly dependent upon the attitude of the waris and the knowledge they have of the subject. On the whole, it cannot be said that ordinary people, especially in the villages, have an adequate knowledge of faraid, let alone an understanding of the mechanics of its operation. All that can really be said is that the village people of Kuala Langat have a general understanding that the male will inherit more than the female.

One of the most common problems faced by any officer dealing with faraid cases is the negative attitude shown by the waris to attempts to make an early settlement on distribution. At a Small Estate Seminar¹⁰³ a total of nine working papers were presented by officers from all the states in the country, each identifying the problems they encountered. In practically every paper presented, the dominant issue seems to revolve around the attitudes and ignorance on the subject shown by most waris. The officers reported that the waris had a lethargic attitude toward making an early application for the distribution of their land,¹⁰⁴ and the present writer can only confirm this view from his own experience. All too often the waris will adopt a policy of 'cannot be bothered' or in the common Malay term used, a 'tidak apa' attitude. By leaving it to the last minute to make an application for distribution, the number of waris eligible under faraid will accumulate as death ensues upon death. As a result it will be very difficult for the officer to trace the real beneficiaries. He will have to go over all the death certificates, which in some cases the waris will have failed to produce (some give the excuse that they have misplaced or lost it). In fact from the writer's personal experience in the district of Kuala Langat, there was no sense of urgency shown by the waris to settle their cases as quickly as possible.

There is also the problem of some waris who insist that the land should be divided according to Hukum Sharak (faraid), no matter how small the size of the land is. To this category of people, the land has a sentimental value.¹⁰⁵ They tend to hold on to the land by whatever means they can, so that they can feel that at least they have some form of property to be proud of in this world. Thus it is not surprising to learn that in some land titles there is multiple proprietorship. In addition, there are personal conflicts and interests which also contribute to the problems faced by the officer. There are waris who arrogantly boycott the hearings conducted in the district office. Despite this, the hearings are normally carried out and the officer will have no alternative but to distribute the land according to faraid. Sometimes, even though a solution has been reached and agreed by the waris the friendly atmosphere only lasts as long as the heirs are in the district office in front of the officer. Once the waris have returned to their villages, they began to cross swords with each other and in some cases, the police have to be called in to calm the situation.¹⁰⁶ The writer has experienced this type of case, in which two waris nearly used daggers to assert their own right to a durian tree (Malaysian regard the durian as the king of fruit not only because of its taste but because of its short season). It happened that some of the branches of the

tree which bore most of the fruit accidentally crossed into the boundary land of the other waris. He later claimed that whatever fruit crossed the demarcation line would be his. In the end, the writer instructed the penghulu to call in the police if his efforts at reconciliation failed. He was not able to reconcile them and in the end the police were called in.

The failure through ignorance on the part of some waris to utilize the facilities available to them in settling their faraid case is another factor which needs to be mentioned again. This was touched on briefly earlier in the mention of the waris using a third party to solve their land problems. To elaborate further on this issue, we may discuss the role of the petition writer. The village people have the habit of approaching these petition writers and persistently depend upon their services. These petition writers are normally unlicensed typists (male, in most cases a pensioner) who operate along the corridors or under a shady tree in the vicinity of the district office. They usually charge their clients at a rate of M\$2.00 for every completed form or letter. Fortunately this problem is non-existent in the district of Kuala Langat because the villagers prefer to use the services of the penghulu, or will come personally to the district office for assistance. The number of petition writers in Selangor is quite low

compared to other states, particularly on the east coast. Only the districts of Petaling and Ulu Selangor have experienced some difficulties in eradicating the role of the petition writers with the waris. Even there, the trend shows some have shut down their businesses. The situation is quite different in the eastern states of Kelantan and Terengganu. In these two states, as reported by the officer,¹⁰⁷ the role of these petition writers is more prominent. What worried these officers was the inefficient service provided by these people in completing the waris application forms which require vital information. All too often they make numerous spelling errors in the names of the waris involved and, even worse, the addresses are not properly typed. In addition, most of the typewriters used are worn out, and as a result of blurred addresses, it is difficult for the district office to serve the notice to the correct address. This is yet another problem in addition to the frequent changing of addresses by the waris mentioned earlier. Investigation by these officers¹⁰⁸ revealed that the main reason behind the continued use of the petition writers by the villagers was that they were not well versed with the law of faraid (a point stated earlier) and did not have the money to make an early application. Some trusted the petition writers more than the government officials. Others thought that they would have to pay a huge fee before their application could be

processed by by the district office. When told that the fee was only M\$2.00 if the application was made through the district office, they were surprised and admitted that they had spent more than that on the petition writers.¹⁰⁹ there were also some who were reluctant to bring their problems to the penghulu for fear that they would be prosecuted for not paying the annual land tax for such a long time.¹¹⁰ Quite a number of such waris are under the impression that by not disclosing the land title, they will be able to have full use of the produce of the land without any interference from the district office. In Kuala Langat this situation is quite common, especially if the land is planted with orchard trees such as the durian and rambutan. These seasonal fruits can bring high financial rewards, particularly if the waris is engaged in secret mortgaging (commonly known as pajak) with another party.

As has been briefly mentioned earlier, there is the problem of the waris migrating not only within the district or state but also overseas. The Javanese in Kuala Langat for example who returned home to Indonesia did create problems in the sense that they failed to leave a proper Power of Attorney or Deed of Renunciation for the waris they left behind. The dilemma lies in the difficulty faced by the officer in getting the necessary cooperation from the various waris. Each one will have

their own version of the facts to validate their claim on the property left behind. In fact, the writer has personally experienced this situation; in the end each waris was asked to swear upon the Qur'an, and the occasion was minuted in the district file. Only one of them was prepared to do so, indicating that he was the rightful claimant to the land.

Political attitudes among the waris towards the establishment are another problem which has repercussions on the smooth functioning of faraid. This was briefly mentioned in Chapter 2. In Kuala Langat for example, some villagers were reluctant to consult the kathi for advice on faraid. They perceived him as a government official who only acted in the interests of the ruling party, U.M.N.O. Such people who abhor any efforts made by the government are normally members of the Pan Islamic Malayan Party (P.A.S.). Some of them even see the kathi as kafir or infidel, and maintain that whatever the kathi does is not in the interest of Islam, but merely fulfilling the wishes of the U.M.N.O. government. Thus some of them will turn to the services of the petition writers mentioned earlier or self-appointed kathis and ulama from among their own members.

Finally, there is also a current of feeling among educated Malay female inheritors that the concept of

faraid is unjust to them.¹¹¹ This attitude is not dominant in the district of Kuala Langat, but in other urban districts such as Klang and Petaling, where the numbers of educated women are quite high, there are reports of some female waris refusing to cooperate with the officers. Some of them even claimed that the concept of adat pepateh should be adopted, thus ensuring their equal rights to any property in question. Such negative attitudes have impeded the efficient administration of faraid in nearly all the districts in the country, and Selangor is no exception.

From our discussion of the workings of faraid in Selangor, it is very clear that most of the burden of administration lies with those institutions at the district level. The importance of the District Officer, Small Estate Officer, kathi and the penghulu cannot be ignored. These individuals form the main branches of a tree and it is vital that they have to maintain a well integrated approach in trying to solve the problem faced by the Muslims in the state. It is also important for the authorities (the State government) to adopt a more serious approach in tackling the problems faced by the officials as discussed in this chapter, particularly the dilemmas faced by the the Small Estate Officer.

NOTES TO CHAPTER 4

- 1 Gibb & Kramer, A Shorter Encyclopaedia of Islam,
 S.v.
- 2 Abdul Rahman Doi, Shariah, The Islamic Law,
(London, 1984), p. 239.
- 3 Nawawi's Minhaj et-Talibin, translated by E.C.
Howard, (London, 1914), p. 259.
- 4 Ibid.
- 5 Q. Sūrat al-Baqarah (2): 180-182. Translation by
Yusuf Ali.
- 6 In Mishkāt al-Masābīh vol. 2, p. 526 as quoted by
Ahmad Ibrahim in unpublished working paper entitled
'Islamic Law of Wills', p. 5.
- 7 Abdul Rahman, op. cit, p. 330.
- 8 Ahmad Ibrahim, op. cit. loc. cit.
- 9 Ibid.
- 10 As quoted by Abdul Rahman from Sunan Abu Daud,
Vol. 2, p. 805-806. Also quoted by Ahmad Ibrahim in his
unpublished working paper mentioned earlier.
- 11 Hiba means gift from one living person to
another without usurping or neglecting the rights of his
descendants and near relatives and must be immediate and
unqualified transfer of the corpus of the property
without any return. See Rahman Doi, p. 334 for further
discussion on this concept.
- 12 Q. Sūrat al-Baqarah, 261-274.
- 13 Ibid.
- 14 Ibid.
- 15 Ahmad Ibrahim, op. cit, p. 3.
- 16 Nawawi, Minhaj, op. cit, p. 262.
- 17 Ibid.
- 18 Ibid.

19 Ibid.

20 Ibid.

21 Ibid.

22 Interview conducted by the writer with Kamarul Zaman Habib on 14.4.1987 at the office of the Director General of Lands and Mines, Kuala Lumpur.

23 This case has been cited by many legal journals especially Jernal Undang-Undang with the prime source coming from the Federated Malay States Review 1, No. 204, 1915.

24 Kamarulzaman Habib, 'Sistem Pengurusan dan Pembahagian Pesaka Kecil Di Semenanjung Malaysia', Seminar Faraid Kebangsaan, June 1983 at the National University Malaysia, Bangi, Selangor.

25 K. Balan, 'Testamentary and Bequeathable in Islamic Law of Will', in Jernal Undang-Undang, Vol. I 1975.

26 Ibid.

27 Kamarulzaman, op. cit, p. 14.

28 Ibid.

29 Translation of the circular dispatched to all the state governments by the Council for Religious Affairs on 9th October, 1973.

30 Ahmad Ibrahim, 'Harta Penama', Seminar Faraid Kebangsaan, June 1983 at the National University Malaysia, Bangi, Selangor.

31 Ibid.

32 Ibid.

33 Interview with Kamarulzaman Habib.

34 Howard's translation of Nawawi's book of the same name.

35 Moulavi Babu Sahib, The Law of Inheritance in Islam, (Singapore, 1979), p. 2.

36 N.J. Coulson, Succession in the Muslim Family, (Cambridge, 1971), p. 1.

- 37 Abdul Rahman, op. cit, p. 272.
- 38 Moulavi, op. cit, p. 19.
- 39 Nawawi, Minhaj, op. cit, p. 246.
- 40 Ibid.
- 41 For Section 5, see p. 249 of the same book.
- 42 Nawawi, op. cit, p. 247.
- 43 Ibid.
- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 Op. cit, p. 248.
- 49 Ibid.
- 50 Ibid.
- 51 Ibid.
- 52 Persidangan Ulama, Jawatankuasa Majlis Agama Islam Malaysia.
- 53 Ibid.
- 54 Small Estate (Distribution) Act, 1955.
- 55 The writer's conversation with the late penghulu Muhammad Bin Bandar while serving in the district of Kuala Langat in 1978.
- 56 Very common among the Javanese population in Kuala Langat.
- 57 See T. Wilson, 'The Inheritance and Fragmentation of Malay Padi Lands', Malayan Agricultural Journal (Kuala Lumpur, 1955) p. 24. Similar situation exist in some parts of Kuala Langat.
- 58 Study conducted by the Section on Small Estate Distribution of the Ministry of Lands and Mines.

59 Stipulated under Section 8(1) of the Small Estate (Distribution) Act.

60 Ibid.

61 This scheme was started as a pilot project whereby each successful applicant from the district is allocated 3 acres of land for the sole purpose of planting oil palm. It was started in 1977.

62 The scheme involved the participation of youths from the district where as in the above mentioned scheme 3 acres of land are also allocated for the youth. They were given some subsidies in the form of manure and young oil palm plants.

63 The scheme involved the opening of 3,000 acres of swampy land located along the borders of Klang and Kuala Langat district. This is one of the biggest land schemes carried out by the Selangor State Government in the 80's.

64 Kamarulzaman, op. cit, p. 4. See also Buku Panduan Harta Pesaka Kecil issued by the Director General of lands and mines.

65 Ibid.

66 Section 3(1) Small Estate (Distribution) Act, 1955.

67 Section 31(2) Small Estate (Distribution) Act, 1955.

68 In the case of Kuala Langat, the adat adopted is adat kampong or village custom.

69 Section 12(7) of Small Estate (Distribution) Act.

70 Issued under the auspices of the Legal Research Board by international Law Book Services, (Kuala Lumpur, 1985), p. 12.

71 Ibid.

72 Ibid.

73 Ibid.

74 Ibid.

75 Interview conducted on the 15/3/86 with Puan Mariyam Lamri, at the Small Estate Office in Kuala Langat.

76 The file number 49/70 of the Pejabat Tanah Daerah Kuala Langat, entitled Permohonan Bicara kuasa.

77 This case was heard on the 15.4.1986 at the Small Estate Office in Kuala Langat.

78 Section 16(1), Small Estate (Distribution) Act.

79 Under the Malaysian Land Code, a caveat is a provision under law made to protect the interest of the minor or a person of an unsound mind involving any land that these people are entitled to. It can be used by parties involved to safeguard their interest in case the land in question is secretly disposed of by one of the interested parties.

80 Section 13(2), Small Estate (Distribution) Act.

81 Section 17(2) of the same Act.

82 Section 14. See also steps taken to proceed with the hearing on the dispute.

83 Section 13(1), see also Section 15, p. 15.

84 Ibid.

85 Small Estate (Distribution) Act, p. 23.

86 Op. cit, p. 24.

87 Interview with Puan Mariyam Lamri.

88 General opinion voiced by all Small Estate Officers who attended their Seminar, The Small Estate Seminar in Morib, Selangor, 1981.

89 Ahmad Embong, Small Estate Officer from the state of Terengganu in presenting his paper entitled, 'Mengemaskinikan Pentadbiran Pesaka Kecil' at the Seminar, p. 6.

90 Wan Abdul Halim, Small Estate Officer from Terengganu Selatan in presenting his paper entitled, 'Kearah Melengkapkan Diri dan Menyelaraskan Tindakan Pegawai Pesaka Kecil', at the Seminar, p. 10

91 Mohd. Zin, Small Estate Officer from Dungun, Terengganu, paper entitled 'Masaelah Bahagian Harta Pesaka Kecil', p. 19.

92 The calls were made by the Small Estate Officers at the above mentioned Seminar; memorandums and suggestions have also been submitted, particularly by The State Religious Departments, including Selangor's Jabatan Agama Islam Selangor.

93 Ismail Abdullah, Small Estate Officer from Kelantan paper entitled 'Bahagian Pesaka Kecil dan Masaelah yang diHadapi', at the Seminar, p. 12.

94 The working paper was prepared by the Section on Small Estate of the Ministry.

95 Working paper No. 3/83 of the National Land Council," Suggestions forwarded by a Special Committee appointed by the Federal government to review the Act." The Committee members comprise officials from the Legal Advice Department of the Attorney General Chambers, Senior Small Estate Officers and officers from the Law Section of the Ministry of Lands and Mines.

96 Full Amendment proposals can be referred to the Working paper entitled, Pindaan Akta Pembahagian Pesaka Kecil (Akta 98), Office of the Director General of Lands and Mines, Kuala Lumpur, February, 1985.

97 Working paper, p. 4.

98 Op. cit, p. 10.

99 Ibid.

100 Working paper, p. 12.

101 Op. cit, p. 9.

102 Ibid.

103 Seminar Pegawai Penyelesai Pesaka Kecil, held on the 30.11.81 at Morib, Selangor.

104 View given by Yusof Daud in his paper entitled Penyelesaian Pesaka Kecil, Masaelah-Masaelah Pentadbiran dan Pembahagian, at the Seminar, p. 4.

105 Kamarulzaman, op. cit, p. 10.

106 Mohd. Zin, op. cit, p. 15.

107 Ismail Abdullah, op. cit, p. 13.

108 Ibid.

109 Ibid.

110 Annual land tax is levied at a very low rate, usually between the range of M\$5.00-15.00 per acre.

111 Siti Shaika in her M.A. thesis entitled 'The Role of Woman Under Shariah Law in Malaysia', University of Kent at Canterbury, 1975 seems to support this point of view.

CHAPTER 5

WAKAF AND BAITULMAL ADMINISTRATION

IN SELANGOR

I. Wakaf.

(a) The Concept of Waqf

Waqf (pl. awqāf) according to Imām Abū Yūsuf¹ signifies the appropriation of a particular article in such a manner as subjects it to the rules of Divine property, where the appropriator's right in it is no longer valid and it becomes the property of God, the advantage of it reverting to Him.² Put another way, it means primarily 'to protect something, to prevent it from becoming the property of a third person',³ The law of waqf according to Ameer Ali, is the most important branch of Islamic law.⁴ This is because it is interwoven with the entire religious life and social economy of the Muslims.⁵ Because of its importance, there is a tendency towards greater state control in most Muslim countries, and the State of Selangor is no exception. In Malaysia itself, the form waqf has undergone a slight phonetic modification and is commonly spelt wakaf.⁶ This spelling will be used throughout this discussion.

In the following brief description of the concept of wakaf, the discussion will evolve within the context of the Shafi'i school of thought. As in the case of wasiyat in Chapter 4, the reference used by the Jabatan Agama Islam Selangor for the implementation of wakaf laws in the state is Nawawi's Minhaj-et-Talibin and in the last ten years or so, al-Haythamī's Tuhfat al-Muhtāj.⁷

According to Nawawi, the founder of a wakaf, known as a wāqif, must be capable of declaring his wishes and must be able to dispose of his property at his own will and pleasure, and the foundation dedicated must be of such a kind that perpetual use may be made of it.⁸ A foundation made without designating an original beneficiary capable of enjoying it immediately, for example 'in favour for the child I shall have',⁹ is regarded as null and void. However, Shafi'i recognises the validity of a wakaf where one of the intermediary beneficiaries does not exist, for example, where it is said, 'I make a wakaf in favour of my children; and if I have none, then in favour of a person and after that in favour of the poor'.¹⁰

Before proceeding further, it is necessary to differentiate wakaf from the concept of wasiyat discussed earlier, although the making of wakaf is identical to wasiyat in many respects. It goes without saying that a

great part of what is called wakaf is made in fact in the form of a wasiyat and therefore is generally subjected to its rules and regulations.¹¹

One difference however is that the law of bequest permits the usufruct or income of a corpus to become the subject matter of the bequest. On the other hand, wakaf stipulates that the subject matter eligible for wakaf must be a specific corpus, which nullifies the making of the benefit or the income of a corpus the sole subject matter of wakaf.¹² Another contrast is that unlike a wasiyat which becomes operative only at the death of the testator, and is therefore subject to revocation, the bequeathed wakaf binds immediately.¹³ Thus it is irrevocable once it has been made, thereby rendering ineffective the doctrine of revocation in respect of such a bequest.¹⁴

Historically, the establishment of wakaf started right from the time of the Prophet Muhammad S.A.W. when the very first mosque and Islamic centre was built by him in Medina. The mosque, called Al-Masjid Al-Nabawi, was built on a parcel of land belonging to two orphans.¹⁵ Despite the Prophet's insistence on paying for the land, they refused to accept any form of payment, preferring to take it from Allah in the next world.¹⁶ It can be said that the motive of the law in authorising wakaf is to

enable the founder, the wāqif, (e.g. the two orphans mentioned above) to secure spiritual advancement in the life to come. Prophetic traditions mention three things that a man can leave behind which will bring benefit to him as soon as he dies, namely the establishment of welfare institutions, the writing of a book by a scholar from which people will benefit after his death, and pious children who will pray for the parents after their death.¹⁷ This hadith encouraged the companions of the Prophet S.A.W. to tie up part of their property for the welfare of the people and their actions have been followed to the present day by devoted Muslims who can afford it. The example set by 'Umar may be seen from the following two passages from the Sahīh of Al-Bukhārī;

'...Then 'Umar said: O the Apostle of Allah, I have received a property which is precious to me. And I wish to give it away in charity. Then the Prophet (S.A.W.) said: Give its Asl (corpus) in charity; it is not to be sold, nor to be gifted away, nor to be inherited. Rather its usufruct should be given away'.

'...Then 'Umar came to the Prophet (S.A.W.) and said: I have received such a piece of land that I have never received a property more precious than it. Now how do you ordain me? the Prophet (S.A.W.) said: If you wish, tie up its Asl and give it away as Sadaqah. Then 'Umar gave it in Sadaqah with the condition that its Asl would not be sold, nor be gifted, nor be inherited.'¹⁸

(b) Condition for the validity of a wakaf

(1) In order for a wakaf to be valid, the wāqif, or the person who creates the wakaf, must be of full age, sound mind and unrestrained in the use of his property. In other words he must be in full possession of his physical and mental faculties, and intelligent enough to understand the effect of his own action and the nature of the transaction.¹⁹ In addition he should not be under duress to do so nor should he be defrauded into creating a wakaf.²⁰

(2) The property in question must be declared wakaf with clear intention by the founder. No particular form is necessary and moreover the dedication may be either oral or written.²¹

(3) There is no condition laid down as to whether the wāqif must be a Muslim or not when making such a wakaf.²² In addition, wakaf to non-Muslim individuals is valid since they are eligible to benefit due to their assumed need. The Prophet S.A.W. is reported to have said, 'Every soul is worthy of receiving alms', and also there is the precedent of Ṣafiyya, the Prophet's wife, who was reported to have made a wakaf to her Jewish relatives.²³ However the dedicating of wakaf to non-Muslims in Malaysia can be said to be completely non-existent.

(4) The property to be made wakaf must be tangible e.g. land and buildings.

(5) It is a neccessity that once a wakaf has been made, especially upon the death of the founder, that the declaration must be intended to take effect immediately without much delay.²⁴ This situation is similar to that with the dedication of a gift.

(6) The waqif must not dedicate more than one-third of his estate as a wakaf property unless his heirs give their consent to this. (similar to the rules governing wasiyat in the process of faraid).²⁵

(7) The objective for which the wakaf is created must not be against the principles of Islam. For example a Muslim will not be allowed to create a wakaf for a temple or deity, which naturally conflicts with the fundamental principle of Tawhīd (monotheism) of Islam.²⁶ This prohibition is also applicable to the construction of churches and synagogues.

As far as the Shafi'i school is concerned, there are other criteria for a particular wakaf to be valid apart from those mentioned above.

Firstly, a wāqif must have free disposition of the property in question and must not be in debt. Thus a

property cannot be made wakaf in order not to defraud or defeat a creditor.²⁷ Since it is stated in the Holy Koran;

'O Ye who believe! Give of the good things which ye have (honourably) earned, and of the fruits of the earth which we have produced for you and do not even aim at getting anything Which is bad, in order that, out of it ye may give away something...'²⁸

it follows that Islam will have nothing to do with tainted property and moreover its moral code requires that what is gained should be acquired through honourable and honest means.²⁹

Secondly, the wakaf of movable property is as valid as that of immovable property, and wakaf of mushā' or property held in joint tenancy, is valid.³⁰

Thirdly, a wakaf, whether family or welfare³¹ is not valid if the proposed administrator is not capable of taking possession (constructively or actually) of the wakaf. Thus it is safe to assume that a wakaf made in favour of an infant 'en ventre de sa mere' or a slave is not valid.³²

Fourthly, as mentioned earlier, a wakaf favouring the establishment of a non-Muslim place of worship is

prohibited. However the Shafi'i school is of the opinion that a wakaf in favour of a hospital for Christians and Jews, made as it is with a charitable object, is lawful.³³

Fifthly, the intention to endow a foundation should be expressed in explicit terms, for example, 'I make such and such a thing a wakaf', or 'My field shall be a foundation in favour of so and so'.³⁴ However, if the following terms is expressed;

'I constitute this land of mine to wakaf for a term of one year',

then the above expression is null and void because of the time frame given. Such limitation to a particular time is not lawful. However, it would be valid and perpetual if the wakaf was done in favour of a mosque or burial ground and thus the limitation was void.³⁵

Finally, according to the Shafi'i school a wakaf will not be valid if it is made in the absence of a primary beneficiary of the usufruct capable of enjoying it immediately.³⁶ An example can be given of an individual who utters the words overleaf;

'I make a wakaf in favour of the child I may have'.

The above intention is not valid on the grounds that there will be nobody to take possession of the wakaf.

(c) Subject of the wakaf

(1) Immovable Property

The oldest forms of wakaf were mostly of a permanent character. These consisted mainly of lands, fields, gardens and buildings. Jurists from all the schools³⁷ are in full agreement as to the validity of the wakaf of immovables. It cannot be denied that immovable properties were the common form of wakaf among the companions of the Prophet and it is for this reason that all the schools are in complete agreement on the validity of immovable properties as wakafs. If a wakaf consists of land, then everything appertaining to the land such as tenements, roads and trees either attached to or upon the land comes under the heading of wakaf, but this does not apply to the partible produce.³⁸ However when the land is dedicated for a cemetery while big trees and buildings are on it, they will not be included in the wakaf, though it may have been stated in the wakaf-deed that the dedication is with all appurtenances and rights.³⁹

(2) Movable Property

The question as to whether a movable property may be regarded as wakaf has created slight differences in opinion among Muslim jurists. The main reason is because these properties do not usually possess the quality of permanency and therefore, to some, cannot be made wakaf by an individual. However some like Sarḥān, Al-Abyanī and Khallāf have pointed out that if beneficial to the ummah, exceptions have been recognised in favour of movables permanently fastened to immovable property.⁴⁰ Abū Yūsuf held the view that wakaf of movables must be by way of dependence (tibā'an) on land,⁴¹ while Muḥammad al-Shaybānī's view is that wakaf is valid for movables with respect to which recognised custom, (ta'arruf) has agreed. He gives such examples as copies of the Holy Qur'an, books, pick-axes, hatchets, saws, cauldrons and biers, on account of the existence of custom as regards the making of these things wakaf.⁴²

Al-Shāfi'i is of the opinion that the dedication of every kind of property which is not consumed in use is lawful.⁴³ It is for this reason that wakaf cannot be made of food or of scented plants, but apart from this it may be made equally validly of immovables, movables and of indivisible things. Al-Shāfi'i's opinion is supported by Mālik and Ibn Ḥanbal.⁴⁴

(3) Wakaf on Communally-held Property (Musha')

As mentioned in the earlier discussion, a wakaf made of a share in a communally-held of property or mushā' which is incapable of partition is valid. This is the general opinion of all jurists. As regards wakaf on mushā' property in order to build a mosque on it or turn it into a burial ground, they hold that it is not lawful on the grounds that the wakaf is unattainable by the fact that it is mushā'.⁴⁵ However, they are of the opinion that in the event that there already exists a mosque on a different parcel of land and a share of another mushā' property is dedicated for the upkeep of such a mosque, the dedication is considered as valid. This type of wakaf can only be accepted on the condition that the property must be divided if it is capable of partition without destroying the object of the wakaf.⁴⁶

(d) Classification of Wakaf

Since wakaf is created for the general welfare of society it is divided into three sections, namely al-waqf al-ahli or al-waqf al-khāss (family wakaf), al-waqf al-khayrī or al-waqf al-'āmm (welfare wakaf) and al-waqf al-mushtarak (combined family and welfare wakaf).

(1) Al-Waqf al-Ahlī or Family Wakaf

This type of wakaf is established on the grounds that it ensures the welfare of near relatives of the wāqif and his family, in the hope that they will obtain their needs from it for all their lives.⁴⁷ This form of wakaf is applicable to both movable and immovable property; for example it can be in the form of books left behind by the wāqif for his children. In the event that there is no longer anybody within the family to administer this wakaf property, it will revert to the welfare and usage of the public soon after their death.⁴⁸

(2) Al-Waqf al-Khayrī or Welfare Wakaf

Al-waqf al-khayrī is solely created for the welfare of the public whether it to be to individuals, such as catering for the needs of orphans, the destitute and the handicapped, or for maintaining mosques, schools, hospitals, cemeteries and other places of public welfare.⁴⁹ The majority of Muslims perceive this type of wakaf as the most pious act that they can perform, and hope that as long as the property they have dedicated to this type of wakaf is being utilised to its full by the public, Allah will continue to give them His blessings. In fact this is the most common and popular form of wakaf found in Selangor. Public acceptance of this type of

wakaf has been growing steadily and most people prefer to bestow their property for the welfare of the public rather than that of their own family. This is because they hope that by doing so the family relationship will continue to be fostered, and the risk of a family break-up that might occur among individuals staking their claims to the property left behind will be obviated. On the other hand the creation of scattered parcels of wakaf land creates its own problems, which will be discussed later in this chapter.

If we analyse the two types of wakaf discussed above we find that we cannot really draw a clear-cut line between waqf ahli and waqf khayri, since they are intertwined with each other. However, one difference that can be identified between these two wakaf is that with the creation of waqf khayri, the income goes immediately to some religious, cultural or charitable institution such as mosques, cemeteries and colleges, while the income from waqf ahli, though in the end it will be devoted to these institutions, is initially assigned to the persons specified in the wakaf deeds. However, on the death of the children of the wāqif the waqf ahli will revert to charitable purposes and thus become in effect the same as waqf khayri.

(3) Al-Waqf al-Mushtarak or combined Welfare and Family Wakaf

This form of wakaf involves an amalgamation of the two wakaf mentioned above. An example of waqf mushtarak would be a property (usually land) dedicated partly to the wāqif's family and partly for the welfare of the public. In most cases, if the total acreage of land dedicated towards this type of wakaf is large, the problem will not be as great as when the plot is small and unproductive. Most Islamic governments, being aware of these problems, try to discourage Muslims from dedicating their property to this type of wakaf. In Selangor itself, the number of properties involving this type of wakaf is quite small.

(d) The Administration of Wakaf

The creation of wakaf naturally leads to a need for its administration, and so a mutawallī or nāzir (manager) is appointed. During the Abbassid Caliphate for example, the qādī is said to have assumed responsibility for the supervision of wakaf properties.⁵⁰ By the beginning of the nineteenth century however, there were already signs of the problems which would be faced in the administration of wakaf. The root of the problem seems to have lain not in the system of wakaf itself but in the

way it was implemented, or in the manner in which the mutawallīs discharged their responsibilities. In one Muslim country after another, it has been found necessary for the government to promulgate legislation designed to regulate the way in which wakaf were administered and more importantly, to prevent some of the abuses which were characteristic of so many of these family or charitable endowments and their private administrators.⁵¹

In some Muslim countries, special Ministries of Awqāf have been set up and given statutory powers, thus testifying that wakaf administration is a very important aspect of Islamic Law. One illustration of the difficulties faced by a government in the administration of wakaf properties took place between 1809-1814 in Egypt when the Egyptian government under Muḥammad 'Alī issued a famous decree forbidding the creation of any further wakaf in the country.⁵² Prior to this decree, known as Irāda Saniyya, Muḥammad 'Alī had already obtained a fatwa from Muḥammad ibn Maḥmūd al-Jazāyirī, the Ḥanafī Mufti of Alexandria, that it was allowable for the Ruler, as a matter of state policy, to forbid the creation of any further wakaf in order to prevent abuses.⁵³ However, the decree was limited only to agricultural land and was frequently evaded. It finally became a dead letter.⁵⁴

(1) The role of the mutawallī

According to Nawawi, the founder can reserve to himself the administering of the wakaf in question, while where he has conferred this duty upon another person, that disposition must be adhered to; but in the event that the founder has made no stipulation with regard to this, the administration must be entrusted to the court.⁵⁵ Thus, in normal circumstances, the power of appointing a mutawallī lies with the court.

One of the main criteria laid down upon an individual appointed as a mutawallī or a manager of wakaf properties is that he should be of good character and qualified for the office both by his physical powers and intellectual faculties.⁵⁶ Furthermore, when a court is vested with the power to appoint a mutawallī, it normally shows a preference towards an individual of personal integrity from among the members of the founder's family. However, it must be pointed out that this is a matter for the discretion of the court and not a matter of right for the relative concerned.⁵⁷

As far as the function of the mutawallī is concerned, his main aim is to perform all reasonable acts which are justifiable and proper for the maintenance, protection and administration of wakaf property. He must

carry out all his duties in accordance with the provisions of the wakaf instrument.⁵⁸ The fact that a wakaf property cannot be alienated means that it cannot privately be vended by the mutawalli.⁵⁹ In carrying out the collecting and distributing of rents and profits, the appointed individual is also forbidden to overstep the limits of his power.⁶⁰ It is sad to learn that in some Muslim countries, there were quite a number of mutawallis who misused their power in administering wakaf properties.⁶¹ As stated earlier, there is nothing wrong with the system of wakaf which was practiced by the Prophet and his Companions. The only problem lies in the way the system was implemented, given that it was carried without modification to nearly all Muslim nations.⁶²

The mutawalli may receive remuneration provided by the founder. In the event that no such provision has been made, the court will possibly fix a sum not exceeding one-tenth of the income of the wakaf.⁶³ This reward can be fixed and paid either monthly, annually or proportionally (the most common form of payment is on a monthly basis). This payment is made after all expenses incurred in maintaining the wakaf property in question have been met.

(e) Wakaf Administration in Selangor

The administration of wakaf in Malaysia and Selangor in particular is mostly involved with wakaf endowed in the form of immovable property such as mosques, land, cemeteries and buildings (including single storey houses and shophouses).⁶⁴

In Selangor, the unofficial implementation of wakaf in the state came into practice as early as 1874, in a similar manner to the workings of faraid and baitulmal.⁶⁵ The practice of this Islamic Law was adopted among the villagers, normally with the advice of a penghulu or an alim (religious scholar) within the village society. During this period, unfortunately, there were no official records or surveys conducted by the state government to show whether the administration of wakaf was fully or efficiently administered. The British probably left the entire problem with the religious officials they appointed to do the job and seem to have had no enthusiasm to administer this Islamic Land Law. It can be said that the turning point in wakaf administration in the state took place in 1952 when Selangor, the first state in the country to adopt the Administration of Muslim Law Enactment, legislated wakaf procedures as part of this Enactment. The Enactment outlined three types of

wakaf.⁶⁶ The basis for wakaf administration in the state was outlined under Part IV (Section 95), in which is stated the following;

'Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting the same, the Majlis (Religious Council) shall be the sole trustee of all wakaf, whether wakaf'am or wakaf khas, of all nazr 'am, and of all trusts of every description creating any charitable trusts for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with Muslim law, to the extent of any property affected thereby and situated in the State of Selangor and where the settlor or other person creating the trust, wakaf or nazar'am was domiciled in the State of Selangor to the extent of all property affected thereby wherever situate.'⁶⁷

The Enactment also gave guidelines as to the restrictions imposed on the creation of charitable trusts. This was stipulated under Section 97(1) and (2) ;

'Whether or not made by way of will or death-bed gift, no wakaf or nazr made after the commencement of the Enactment and involving more than one-third of the property of the person making the same shall be valid in respect of the excess beyond such one-third.'

'Every wakaf khas or nazr made after the commencement of the Enactment shall be null and void unless -

- (1) His Highness the Sultan in Council shall have expressly sanctioned and validated the same, or

- (2) it was made during a serious illness from which the maker subsequently died and was made in writing by an instrument executed by him and witnessed by two adult Muslims⁶⁸ living in the same village as the maker.

Even though under the Enactment, the main supervision of wakaf properties in Selangor is vested in the State's Religious Department through the district kathis, in practical terms, the daily running and administration of these properties are entrusted to appointed mosque and kariah committees, or Jawatankuasa Masjid dan Kariah.⁶⁹ The committee members are appointed by the Sultan of Selangor through the Religious Council. The members comprise the district kathi (ex-officio), the penghulu of the mukim and the mosque officials or pegawai masjid.⁷⁰ Every mosque official appointed shall receive a tauliah (letter of appointment) under the seal of the Sultan and have such powers and duties as may be set out in their respective tauliah. An example of such a letter is set out in Appendix C. Among the powers vested to these officials are included the following;

'...the pegawai masjid of any mosque shall have such powers and duties as may be set out in their respective Tauliah. While performing such duties or any of the duties hereinafter mentioned, the pegawai masjid shall be deemed to be public servants, within the meaning of the Penal Code...'⁷¹

It can be said then that the committee appointed by the Sultan is actually the mutawallī for the properties dedicated towards wakaf. As most of these wakaf properties are either owned or administered by the mosques, all the necessary expenses incurred in the daily running of the place of worship will be borne by the income derived from such properties. Since the intention of the wāqif was a pious one, all these people hope for is to get the blessings of Allah and be rewarded in the next world (ākhirat).

From the above discussion we can see that in reality the power to administer the wakaf properties in the districts lies not with the representative of the Religious Department (the district kathī) but with the mosque and kariah committees. It can be argued that the kathī only acts as a scrutineer and not an enforcer of the law. In fact the committee are given full independence in developing the properties in whatever way they think necessary so that in the long term they will bring a financial reward. The freedom left to these individuals will inevitably lead sometimes to dubious dealings, malpractices and inefficiency, as has been happening in some of the kariahs.⁷² The development of these wakaf properties thus depends entirely upon the initiative of the pegawai masjid.

The wakaf properties in Selangor have traditonally been situated in the rural areas with some pockets of wakaf land located in the towns. However, as a result of rapid development, the patterns of location have changed tremendously in recent years, especially during the Premeirship of the late Tun Abdul Razak. The number of wakaf properties has shifted quite rapidly to urban areas as land originally earmarked for rural development has been transformed into urban centres, mostly as a result of the extension of town boundaries. This is similar to the situation with land involving faraid cases discussed at the beginning of the chapter.

It is not possible to give an account of the total number of acres involving wakaf properties in the form of land, such as mosques, cemeteries, surau (a small prayer house) and wakaf khās dedicated to the mosque treasury in the state for the years up till late 70's. However as a result of the recent restructuring and the establishment of a separate section on wakaf in the State Religious Department, figures involving wakaf land in various forms have become available as indicated in the next page;

	<u>Year</u>	<u>Year</u>	<u>Year</u>
	1984	1985	1986
	(in hectares)		
(1) Land allocated for mosque	129.702	138.102	139.102
(2) Burial grounds	961.702	961.30	961.130
(3) Land allocated for <u>suraus</u>	64.465	64.465	65.466
(4) Treasury for the mosque	59.505	61.400	63.610

It is also worth looking at the total acreage of wakaf land in the Federal Territory since these lands were previously under the supervision of the Selangor State Religious Department, prior to the declaration of Kuala Lumpur as a Federal Territory. The decision by the Federal Government to raise the status of Kuala Lumpur to a Federal Territory has probably made administration of wakaf properties much easier for the state's religious body. Credit should be given to the Federal Territory Islamic Council in recent years for administering these wakaf properties in a productive and efficient manner. In fact, the Council has successfully adopted a new system of wakaf called wakaf kaki (wakaf of land measured according to its yardage) which should solve the problem of assisting Muslims in the Federal Territory to acquire cheap lands. This device enables them to purchase these lands at a reasonable price, and then to re-wakaf them back to the Council under their own names. The Council

also took the necessary steps to transform the wakaf properties into viable and profitable projects, such as the building of a Muslim private hospital, supermarkets and housing projects which are in acute shortage in the city. This is a step which could well be followed by the Selangor Religious Department, especially as regards wakaf land located in the big towns such as Klang, Petaling Jaya, Kajang and Gombak.

(f) The Nature of Wakaf Properties in Selangor

As in many other states in the country, the institution of wakaf in Selangor is mainly practiced in two forms, namely wakaf khas and wakaf am (for definition of these terms see footnote 66). Most of the properties dedicated are in the form of wakaf am. These are for the building of suraus and the extension of schools, especially religious institutions like madrasah and cemeteries. Of these, the most popular is the erection of suraus⁷³ ; thus in the district of Sabak Bernam in 1986 alone, out of 14 application received by the J.A.I.S. from individuals residing in the district, 8 applications were dedicated to the building of these suraus.⁷⁴ The reason for the frequency of this type of dedication is that the villagers generally have less than two acres of land and since the building of a suraus does not require an extensive area, (normally 100ft by 100ft)

they feel that this will be their only opportunity to gain spiritual blessings from Allah. Moreover, there are already large mosques built by the state government in every district and certainly mukim; in the district of Kuala Langat even every mukim has several mosques, built privately or by the government. In principle the building of any mosque or surau must have the final approval from the M.A.I.S except in special circumstances where the Menteri Besar or Chief Minister can make such a decision at his own discretion, but in practice the state rarely intervenes, since this is a delicate matter and intervention could often cause trouble. More and more people are now beginning to feel that it is desirable to wakaf their property towards the erection of suraus and even villagers of modest means who would once have wanted to wakaf their property towards the extension of religious schools now seem unwilling to fulfil this religious duty, since from the 70's onwards all religious schools in the state have been incorporated, supervised and financed by the Selangor State government. Recent trends have also shown a growing number of individuals establishing wakaf properties by building houses and flats for rent, the rent of which is made wakaf.

Certain wakaf properties in the state are leased for a period of 66 or 99 years by the J.A.I.S. This is usually in the form of land and it normally involves

administration by this body. In some cases, the rent charged is only M\$1.00 per month, a rate which was charged in the nineteenth century and has continued ever since. As for land involving a leasing period of 66 years (this was first started in the 60's), the rent imposed is only M\$10.00; this type of land is usually located in urban areas. This is probably the most unfortunate aspect of wakaf administration in the country, and because of the failure of the state governments to exert pressure on the Federal government to revoke its Tenancy Act of 1948, which encompass all types of land in the country, wakaf land not excepted, the tenant is protected more than the beneficiary of wakaf properties. Such a policy only benefits one section of the population, the Chinese, who are paying a minimum rent for wakaf lands located in the towns. A typical example of this can be taken from the state of Malacca where rent for wakaf land situated in the heart of the city is charged at between M\$1.00 and M\$14.00 per month.⁷⁵ As for shophouses, rent charged ranges between M\$17.75 and M\$430.00 per month.⁷⁶ There is no question about the unfairness and the obsolete nature of this Act, or of the urgent need to amend it in order to protect the beneficiaries of these wakaf lands.

From personal observation in the district of Kuala Langat, it can be stated that the major responsibility

for the dilemmas encountered by the District Officer and the kathi lies with those who make their wasiyat or will for their property to be wakaf in an obscure manner. This is especially so with those who are very old and living quite a distance from well-developed villages where the system of communication is a shade better. As a result of such obscurities in the will, the waris tend to challenge the validity of the will without having any regard for the lack of education of the wāqif. Matters such as this are normally referred by the district kathi to the state religious department in Shah Alam for final decision. In order to overcome the problem, the property left behind, whether in the form of movable or immovable, is eventually channelled to the state baitulmal in the majority of cases; in such cases the state will be of the opinion that the wāqif has actually intended to dedicate his property to wakaf am.

Another major problem that can be identified as far as wakaf is concerned in Kuala Langat is a by-product of the dedication of wakaf properties in the district. It appears that after a wakaf has been instituted, the property in question may have been left idle. In this case it is the duty of the kathi to ensure the development of such property, especially land. Once land is left idle it is rapidly overgrown by lallang, a kind

of thorny plant with deep roots which is very difficult to uproot. This is a particular problem with wakaf land in the more remote parts of villages.

(g) Problems Confronting Wakaf Administration
in Selangor

In the previous discussion of the problems faced in the implementation of faraid in the state, one of the causes of these problems was identified as the shortage of manpower and faulty legal enactments hampering its efficient running. The pattern of the problems facing wakaf administration appears to be similar, with the additional problem in the case of wakaf of lack of planning and the vague definition of the functions of the wakaf administration, the J.A.I.S itself.

In Selangor, the mutawalli for all wakaf properties in the state is now the J.A.I.S.⁷⁷ The major problem that wakaf administrators have to face appears to be the shortage of qualified and honest religious officials to deal with the large amount of wakaf properties in the state. In the state headquarters, there is only one officer supervising the wakaf properties in all nine districts of the state. It is regrettable to learn from the officer himself that he simply cannot cope with the amount of work entrusted to him. One can easily imagine

the number of mosque and suraus that he must visit in order to ensure the efficient running of the properties, even though the district kathis are there to help him. This officer should have at least three assistants covering the nine districts in order to relieve the burden upon him somewhat. He cannot rely on the supervision of the district kathis because, as been noted earlier, the kathis are generally kept busy with other unrelated religious activities. The assistants appointed should have some knowledge not only of wakaf administration but more importantly of simple bookkeeping and finance. In this way they could advise the members of the kariah committees on simple financial procedures so that up-to-date accounts can be kept of the revenues from wakaf.

An equally important problem is the nature of the wakaf property itself. A majority of these wakaf land registration titles are still under the wāqif's name. This should not be the case, since the M.A.I.S. should be responsible for them as the legally appointed mutawallī. Properly speaking, it is the responsibility of the district office to inform the M.A.I.S. of the status of a particular piece of land as soon as an individual wāqif has dedicated his property. However, the process of transfer documentation has been very slow in recent years. No one can deny the fact that the fault lies not

only with the inability of the M.A.I.S. to liase with the district office where the registration of title is carried out, but also with the district office itself for its condescending attitude to the M.A.I.S. and its failure to communicate properly with it.

In addition to the above problems, the boundaries of most of the wakaf properties are obscure and not clearly demarcated. This makes it very difficult for wakaf officials to make an investigation. In a number of cases, the M.A.I.S. are faced with the dilemma of identifying the real owner of the wakaf property in question.

Difficulties also exist in getting information from tenants whose tenancy of wakaf properties has expired. Some have been living on wakaf properties for many years without any payment. No supervision is excercised to make sure that these tenants renew their rental contracts so that a smooth flow of income can be maintained by the M.A.I.S. It is hard enough for the M.A.I.S. to even locate the address of the wāqif so that a tranfer of title can be made, since the original wāqif is not always at the given address. There are a few who refused to deliver the title when requested to do so by the M.A.I.S.; perhaps these people had changed their minds and no longer wished to make a wakaf.

Another important problem which is worth mentioning is the inability of the M.A.I.S. to audit the financial collections made from wakaf properties in all the districts. The kariah committees appointed to make the collection in most cases fail to submit a systematic account to the Majlis. The difficulties of the Majlis are compounded by their inability to identify the various mosques and suraus which are yet to submit their profit and loss accounts. This situation is complicated further when inefficient and dishonest individuals in the kariah committees appointed refuse to co-operate with the Majlis in financial matters. In certain circumstances an individual may be removed from the committee and someone from the same mukim appointed, but by this time the damage has usually been done and it is a mammoth task to recover such money as is unaccounted for.

From personal observation of some of the kariah committee members, it may be suggested that they are given too much power to administer the wakaf properties even though they receive little financial reward in return for their services. The Majlis also finds it difficult to scrutinise their daily activities, and has to rely on the reports made by the district kathi and the penghulu of that particular mukim. Moreover the districts located away from the headquarters enjoy a great deal of freedom in the decision making process, and the district

kathi cannot consistently police their activities. Thus, we have a situation whereby the Majlis cannot record the financial activities of these committees properly, let alone keep proper control of the accounts of the J.A.I.S.

(h) Shortage of Financial Resources

Apart from the lack of human resources, wakaf administration in the state is also lacking in another important aspect, that of finance. The J.A.I.S. is under acute pressure to spend more money in developing wakaf properties located in the urban areas. The income derived from these properties is so small and the overhead cost is so high that in nearly all cases, the Majlis have to subsidise these properties to maintain their existence. As stated earlier, revenue received from rents is minute, compared to the expenses required for the carrying out of any proposed development projects. Rates imposed on these land are also quite high. Tenants are enjoying the benefit of loose policy adopted under the Tenancy Act of 1948 discussed earlier.

Unless the state government halt the mushrooming of suraus and concentrates on the maintenance of the existing ones, it will have to spend more in the long run. One solution would be for the government to give an annual grant to the J.A.I.S. so that it can finance its

proposed development projects from the wakaf properties. Such a grant could act as a springboard for other future development projects. If this is not implemented by what is one of the richest states in Malaysia, the future for the development of wakaf properties the state looks bleak.

II. Baitulmal

(a) The Concept of Bayt-al-Māl

Before we discuss the workings of Bayt-al-Māl (baitulmal in the Malay language) in the state of Selangor, an outline of its concept will be given below.

Bayt in Arabic means a House and Māl, property, therefore Bayt-al-Māl can be defined as the treasury of the public.⁷⁸ The very concept of baitulmal is actually the concept of trust, as its wealth is to be treated as Allah's wealth or the Muslims' wealth, as against the imperial treasury as known during the Medieval period.⁷⁹ Aghnides defines baitulmal according to the view given by the Shafi'i school, as revenues which accrue to the Muslim community of the state, the disposal of which has not been determined by express provisions of the shariah in favour of definite classes of beneficiaries but which

is left to the discretion of the ruler to be expended in meeting the fiscal obligations of the state in the common interest of the Muslims.⁸⁰

The baitulmal was regarded as a State Bank of the Muslims in the early Islamic period,⁸¹ and was supervised and directed by an officer designated Khāzin al-Māl, while the provincial treasurer was called Khāzin.⁸² The implementation of baitulmal during this period was done through the disbursement of the entire fay' (spoils of war) by the Head of State, as revenue for purposes of general utility, the greater part of it being transferred from one province to another through the central treasury, which had a number of subordinate treasurers at various places.⁸³ The Head acted as the central authority in controlling all forms of income and expenditure both at the central and provincial level.⁸⁴

In addition to the above functions, the baitulmal also played an important role as an agricultural credit and commercial bank from the days of the Umayyads.⁸⁵ It advanced money on loan and was a clearing house for the merchants in the various provinces which facilitated their commercial activities in the Mediaeval period.⁸⁶ Ahmad Ali is quoted as saying that as far as the terms and condition of these loan were concerned, in his view no interest was charged.⁸⁷

There are three forms of revenues which under the concept of baitulmal become the legitimate assets of the Islamic financial institution that can be disposed at the discretion of the ruler or in the present day context, the government.

- (1) From the fay' revenue, four-fifths belong to the baitulmal and its disposal is subject to the judgement and authority of the ruler. The fay' revenue includes the kharāj and jizyah taxes.⁸⁸
- (2) From the booty-revenue (ghanīmah), the state may levy only a fifth as taxation which again is further divided into five shares to be assigned to the five groups of beneficiaries as in the case⁸⁹ of the fifth part of the fay' revenue.
- (3) The Ḥanafīs regarded property lost and found (luqatah) and estates (tarikah) left by Muslims who leave no heirs (a similar view is also held by the Shafi'i school) as⁹⁰ classes of revenues to the baitulmal.
- (4) Revenue from zakāt also forms part of baitulmal's income and is classified into two categories. These are zakāt of invisible (bāṭin) property such as those of gold, silver and articles of trade and the zakāt of visible (zāhir) property such as cattle and food-produce. The Shafi'i school considers that zakāt revenues imposed on both visible and invisible property do not become part of the assets of baitulmal for in both cases the beneficiaries have been determined by the shariah and the state has no control over it. However, the Shafii school concedes that zakāt dues from visible property may be entrusted to the baitulmal for safe-keeping until it is disposed of to its rightful beneficiaries.⁹¹

(b) The Historical Institution of Baitulmal

In outlining the historical perspective of the institution of baitulmal, one cannot overlook the achievement of 'Umar ibn al-Khaṭṭāb in ensuring the flowering of this Islamic public treasury. This is not to say that nothing was done during the reign of Caliph Abū Bakr al-Ṣiddīq, but 'Umar orchestrated the establishment of a Dīwān⁹² or baitulmal in order to safeguard the managing of the properties and land acquired from war and the conquest of new territories. The idea of the establishment of the baitulmal was first mooted by Khālīd Ibn al-Walīd, to which 'Umar agreed and requested 'Aqīl Ibn Abī Ṭālib, Makhramah Ibn Nawfal and Jubayr Ibn Muṭ'īm to administer the treasury.⁹³ The city of Medina thus became the centre for baitulmal administration and branches were set up in the various territories where treasury officials were appointed under the jurisdiction of the central office.⁹⁴ As a result, 'Umar laid the foundation of a well-organised Islamic public treasury and opened up a new era in Islamic financial activities.

During the period of the Khulafā' al-Rāshidūn, there were no statistics to show the extent to which property under baitulmal was collected, and though Arab historians indicate the enormous amount collected, they do not give a detailed account.⁹⁵ The institution of

baitulmal was then restructured in the reign of Mu'āwiyah in 41 A.H.⁹⁶ Efforts were made to increase the baitulmal's revenue through the collection of kharāj, ghanīmah, fay', and jizyah.⁹⁷ Development of agricultural land was stepped up with the erection of irrigation facilities to water dry areas, with the hope that agricultural produce would increase, leading in turn to an increase in the collection of the various taxes.

Another era which is equally important in discussing the historical development of the baitulmal in its early formative years is the reign of 'Umar Ibn 'Abd al-'Azīz. It was said that he acted mainly as a Muslih (reviver)⁹⁸ in his concern for justice to be done, particularly in weeding out corruption in the administrative machinery and safeguarding the welfare of more unfortunate members of society. His efforts to streamline the machinery of the baitulmal and the vast improvement in agricultural productivity led to an increase in tax revenue amounting to 221m dirham.⁹⁹

Finally, another period of prosperity in the development of baitulmal occurred during the reign of the Caliph Hārūn al-Rashīd, through whose shrewdness the coffers of the treasury increased tremendously. His right-hand man, Yaḥyā Ibn Khālīd, was actually the person behind the instrumentation of this successful

activity.¹⁰⁰ By the time of al-Rashīd's death, the value of the baitulmal property was in the vicinity of 900m dirhams.¹⁰¹

From the above discussion, it can be said that the achievement of the early Caliphs underlying the institution of baitulmal was excellent and might well be imitated by the later administrators of this Islamic financial institution. However, due to the constraints and limitations which exist today, it is highly unlikely that this can take place unless a concerted effort is made by Muslim governments to put the institution of baitulmal in its proper place.

(c) Baitulmal in Selangor

The institution of baitulmal in Selangor was already unofficially established by the time of the British intervention in 1874.¹⁰² However it was essentially a loose, unstructured organization without any well defined objectives or planning such as would fulfil the necessary criteria as an Islamic financial institution. There was no official record to suggest that there was a systematic approach in the collection of zakat/fitrah¹⁰³ or properties left without any heirs which are the main sources of revenue for the baitulmal in Malaysia as a

whole. With only a handful of staff working in a small office in Klang, the activities of Selangor's baitulmal prior to 1952 appear to have been confined to the collection of zakat/fitrah and zakat on padi.¹⁰⁴ Its main aim was to give financial assistance and to look after the welfare of the poor (fakir and miskin) in the state, especially on the eve of the Aidil Fitri (the last day of Ramadhan). One can easily imagine the limited extent of the assistance which they could render to the Muslims throughout the state as manpower was short and the total sum collected itself was limited indeed. Thus the money collected could only be distributed to small areas in the districts neighbouring Klang and possibly in the rice bowl districts of Kuala Selangor and Sabak Bernam where zakat on padi played a major role in increasing the revenue of the baitulmal.

(d) Developments between 1952-1969

The Selangor Administration of Muslim Law Enactment of 1952 changed the whole baitulmal scenario. The institution began to take shape and the authorities appear to have taken a more serious view of the subject. It was officially set up in the following year, when the Majlis was given jurisdiction over the activities of the state baitulmal from that time onwards. Under Part

IV, Section 94 of the Enactment, the following was stipulated;

- (1) A Fund to be known as Bait-ul-Mal is hereby established. Such Fund shall consist of all money and property, movable or immovable, which by Muslim law or under the provisions of the Enactment or rules made hereunder accrues or is contributed by any person to the Fund.
- (2) All money and property in the Fund shall be vested in the Majlis who will administer all such money and property in accordance with the rules made under this Enactment:
 Provided that any investment of assets and funds invested in the Majlis may be sold, realised and disposed of, and they and the proceeds thereof may be invested from time to time in any investments authorised by any written law for the time being in force for the investment of the Fund.¹⁰⁵

Strangely enough, even after this clearly defined jurisdiction was given to the Majlis, the activities of the state's baitulmal appears to have remained in the doldrums. The reason for this was apparently the same as that for the lack of progress in the implementation of faraid and wakaf, i.e. the lack of facilities, shortage of qualified personnel, and, probably the most important issue, the weakness of the legal powers of the Majlis to prosecute individuals who fail to pay the zakat when it is due. The system of collection of zakat was a haphazard one and the institution was left on its own to

carry out its activities without any apparent assistance from the government in the form of finance, facilities or government machinery. There was however a committee appointed to administer baitulmal properties, especially land left without any waris. This required a great deal of proper planning for its development but unfortunately activities in this area were also in a state of stagnation. The committee known as Jawatankuasa Baitulmal dan Wakaf/Nazar (Committee on Baitulmal and Wakaf/Nazar) was headed by the Chairman of the Majlis (the Sultan), the Mufti, the Chief Kathi of Selangor and the District Officer of Klang.¹⁰⁶ The District Officer of Klang was appointed probably because the office is located in the district. Ironically, the other eight District Officers were not included in the committee which aroused the suspicion that the efforts made by the authorities to develop baitulmal properties were at best half-hearted. Indeed the committee depended upon the appointed muballigh (missionary) and amil to administer baitulmal activities in the other districts (the district kathi in this case only acts as an overseer for such activities).

The development of baitulmal properties and revenue from the establishment of the Majlis in 1953 to the late 60's has shifted tremendously from the traditional collection of zakat/fitrah to properties involving faraid cases. Up to 1969, a large number of cases involved

faraid lands which had not neither been redeemed by nor sold to the waris.¹⁰⁷ In most circumstances the lands which were originally declared as heirless by the Majlis were later redeemed by self-claimed waris. After thorough investigations and verification by local elders and penghulus, the Majlis was usually symphathatic in selling back these lands at a reasonable price and the money collected was channelled back into the baitulmal Fund as revenue. This source of income for the state baitulmal has been a contributing factor in the accumulation of revenue from 1953-1969 as indicated in the table overleaf.

Total Collection from the sale of
Baitulmal Land 1953-1969

<u>Year</u>	<u>Total Collection</u>
1953	13,792.12
1954	9,116.00
1955	13,301.33
1956	5,332.32
1957	5,736.10
1958	5,588.30
1959	9,445.43
1960	88,956.53
1961	18,253.61
1962	10,660.90
1963	15,322.00
1964	44,584.60
1965	32,487.21
1966	18,430.84
1967	34,961.01
1968	39,884.10
1969	16,646.04
	<hr/>
	M\$382,498.44

Source: Accounts Statement, Majlis Agama Islam
Selangor, 1970.

From the given table, it can be seen that only in 1960 did the total collection from the sale of baitulmal land reach a very high level i.e. M\$88,956.53. No reasons have been given by the Majlis for such a sharp rise. As for other years, the pattern seems to indicate a fairly stable trend.

The performance of the committee appointed by the Majlis can be given some credit for its efforts to initiate investment projects from these properties.

During the span of sixteen years, investment initiatives were implemented in the form of housing schemes in the districts of Petaling, Klang and Kuala Selangor. By 1969, Selangor baitulmal had 9 shophouses and four single storey houses to be rented on a monthly basis. The total income derived from these properties amounted to M\$2,946.00 per month (a small figure indeed considering the fact that this institution is capable of building more shophouses and flats especially in the urban districts).¹⁰⁸ The monthly rent imposed from the properties in these districts in 1969 is given overleaf.

Shophouses and Houses of the Majlis Agama IslamSelangor, 1969

<u>Type of Building</u>	<u>Location</u>	<u>Rent per month</u>
House	Petaling	M\$600.00
Shophouse	Klang	175.00
House	Petaling	380.00
House	Petaling	450.00
Shophouse	Klang	250.00
Shophouse	Klang	150.00
Shophouse	Kuala Selangor	135.00
Shophouse	Kuala Selangor	138.00
Shophouse	Kuala Selangor	135.00
Shophouse	Kuala Selangor	138.00
Shophouse	Kuala Selangor	160.00
House	Kuala Selangor	100.00

		M\$2946.00

Source: Income Statement Majlis Agama
Islam Selangor 1970

Total Annual Rental from Houses and ShophousesMajlis Agama Islam Selangor 1958-1969

<u>Year</u>	<u>Total Income</u>
1958	M\$3,015.00
1959	4,462.00
1960	8,452.00
1961	9,766.00
1962	11,020.00
1963	10,862.00
1964	10,977.00
1965	19,738.00
1966	21,058.00
1967	22,154.00
1968	23,169.00
1969	26,760.00
	<u>M\$171,433.00</u>

Source: Income Statement, Majlis Agama Islam
Selangor, 1970.

(e) Restructuring the Organization of the State's Baitulmal

When the administration of baitulmal was transferred from its temporary office in Klang to the Selangor State Religious Department in the same town¹⁰⁹ there were already some initiatives being shown by the state government towards restructuring the organizational set-up. This was done to ensure maximum efficiency in the running of this Islamic State Treasury. The Enactment of 1952 with reference to the state baitulmal was amended in 1972 to give new additional powers to the Majlis with the creation of the Jawatankuasa Kewangan Baitulmal/Zakat (Baitulmal/Zakat Finance Committee).¹¹⁰ The main aims of this committee were spelt out in a more precise and purposeful manner than was the case with the committee set up in the 50's. This committee was to decide, firstly, the most efficient method for the collection and distribution of zakat in accordance with Hukum Sharak; secondly, to determine in which directions the baitulmal property should be fully utilised and to ensure that it would make the maximum contribution in bringing benefits to all the needy Muslims in Selangor, and finally to choose an Islamic approach in an effort to upgrade the standard of living among the Muslim residents through the institution of baitulmal.¹¹¹

(f) Selangor's Baitulmal in the 70's

From 1970, not only did significant changes take place in the administration of Selangor's baitulmal, but in addition there was an increase in the amount of revenue collected from new sources. These includes the payment of zakat received from the Lembaga Tabong Haji, Malaysia, (Malaysian Pilgrimage Fund Board), fees imposed on marriage registration cards and the sales of religious magazines. A new unit called Yunit Sumber Am Baitulmal Selangor was established to streamline the baitulmal activities in the state.

Yunit Sumber Am Baitulmal Selangor (General
Resources Unit of Selangor's Baitulmal)

Under the amended enactment of 1952 (3/79), the Jawatankuasa or committee appointed to deal with the state's baitulmal were accorded additional powers to administer the properties of the Majlis.¹¹² These properties include the following;

- (a) properties left without any waris or partially used by waris.
- (b) properties involving buildings owned by the Majlis.

(c) shares owned by the Majlis.

(d) trust property.

(e) other sources of income.

(1) Properties left without any waris or partially used by waris

In administering the above, the Yunit will impose the necessary regulations regarding its administration. It is also vested with the authority to consider whether to allow such waris to redeem properties and to sell them back at a cost not exceeding the sum of M\$200,000.00.¹¹³ In addition to this, the Yunit is empowered to decide the time limit for the redemption or selling of such property (wakaf properties can be sold provided it is stated by the wāqif and even if this is so it must be done in the interest of the ummah). Finally, the Yunit is also responsible for the renting and mortgaging all lands belonging to the Majlis.

(2) Properties in the form of buildings owned by the Majlis

Since 1970, the number of buildings owned by the Majlis has dramatically increased. The Majlis has been able to increase its fixed assets through its diversification policy by purchasing existing buildings

in the urban districts, especially in strategic locations. Most property of this nature is rented in order to provide a continuous flow of funds to the state baitulmal. Another function of the yunit is to fix the rent, supervise and maintain such buildings.¹¹⁴ Apart from this, the yunit were also given the necessary authority to plan the long term development of such properties. It can decide as to whether there is a need for additional buildings or whether existing buildings should be refurbished and expanded.¹¹⁵

(3) Shares owned by Majlis Agama Islam Selangor

The Resource Unit is responsible for the purchasing and selling of shares, especially those offered by the state and Federal government.¹¹⁶ Dealing in these shares is normally carried out in accordance with strict Islamic regulations i.e. the shares purchased are only from companies or government corporations where riba is non-existent. The bulk of the shares are derived from statutory bodies like the Pilgrimage Board and the Amanah Saham Nasional (National Unit Trust). There were also moves recently by the state government to encourage the Majlis to invest in 'blue chip' overseas corporations like IBM, ICI and Nestle. The Yunit will however be

required to answer any queries in relation to its performance and activities from the Majlis itself, especially with reference to the purchasing of new shares.

(4) Trust Property

Properties entrusted to the Selangor baitulmal are supervised by this Yunit. It is therefore required by the Majlis to diversify its activities in order to ensure that these properties are not left idle and unproductive. So far the best approach adopted by the Yunit to achieve these aims is through the establishment and execution of small investment projects which have brought jobs particularly to the rural areas. However, it must be pointed out that the Yunit should consider its financial and technical know-how capabilities before embarking on ambitious and ostentatious schemes.

(5) Other baitulmal sources

Long term development planning for other forms of revenue should also be considered seriously by the Yunit.¹¹⁷ Profits from fixed deposits and benefits from other sources of income such as savings in the local banks are to be managed in a businesslike manner. These

sources are in fact vital for the future development and safeguarding of the activities of the Majlis.

(g) Overall Performance of Selangor's Baitulmal
in the 70's

The general achievements made by the Selangor baitulmal in comparison with those in other states of Malaysia in the 70's can be considered to be very encouraging indeed. Two main reasons can be adduced for this.

Firstly, economic factors, particularly with the Federal government's efforts to upgrade the standard of living among the Malays, especially those living in the rural areas.¹¹⁸ The key development plan launched immediately after the racial riots of 1969 was the New Economic Policy (hereafter, NEP), a plan that seeks to eradicate poverty and restructure society with an overriding objective of achieving national unity. The NEP as enunciated under the Second Malaysia plan (SMP) is incorporated into a longer term Outline Perspective Plan (OPP) covering a 20 year period from 1970-1990. The NEP has as its overriding goal the promotion of national unity through the following two pronged strategy:

- (1) reducing and eventually eradicating poverty by raising income levels and increasing employment opportunities for all Malaysians irrespective of race. The implementation strategy is to increase the productivity of traditional small-holder agriculture and traditional urban activities and to encourage intersectoral movements of labour from low to higher productivity endeavours.
- (2) accelerating the process of restructuring Malaysian society to correct economic imbalance, so as to reduce and eventually eliminate the identification of race with economic function. This process involves the modernization of the agricultural sector, a rapid and balanced growth of urban activities and the creation of a Malay commercial and industrial community in all categories and at all levels of operation, so that Malays and other indigenous groups will become full partners in all aspects of the economic life of the nation.¹¹⁹

The effect of the above policy to a considerable extent raised the standard of living of the Malays in the country and those in Selangor were no exception. This economic resurgence among the Malays, particularly those living in the rural areas, does have an important impact on the collection of zakat for the baitulmal and the creation of more wakaf land in the state. Malays were now able to contribute much more than they had previously to due to an increase in their per capita income and their quality of life, which has improved enormously since the inception of the NEP. This occurred not only in Selangor but other states in the country as well, as the table overleaf suggests;

Baitulmal Properties Under the Supervision of
the State Religious Department in 8 Malaysian
States (1974)

<u>State</u>	<u>Fixed Asset</u>	<u>Current Asset</u>	<u>Investment</u>
Selangor	1,363,195.49	1,310,146.63	498,958.90
Perak	847,801.31	1,411,140.99	104,667.06
Kedah	1,419,323.33	2,499,048.29	330,004.80
P.Pinang	161,586.81	835,197.86	451,228.16
Perlis	12,486.00	67,295.86	83,372.84
N.Sembilan	998,018.59	256,895.63	57,571.00
Melaka	1,223,588.60	565,997.68	-
Johor	177,477.00	1,006,942.35	-
Total	M\$5,203,467.13	7,952,665.59	1,525,802.70

Source: The various State Religious Department and the Auditor's General Department.

Selangor's fixed assets do not include the value of the property trust of the Kolej Islam Kelang or Islamic College in Klang which was donated by the late Sultan Hishamuddin. In 1972, the value of the College was estimated to be M\$9m.¹²⁰

Statement of Income and Expenses
Selangor's Baitulmal 1971-1974

<u>Year</u>	<u>Income</u>	<u>Expenses</u>	<u>Balance</u>
1971	365,675.00	157,232.00	208,443.00
1972	369,137.60	179,885.95	189,251.65
1973	482,618.75	213,202.53	269,416.22
1974	481,634.70	112,628.74	369,005.96
Total	1,699,066.05	662,949.22	1,036,116.83

Source: Statement of Income and Expenses, JAIS, 1975.

Secondly, the increasing Islamic awareness not only among the authorities but also among intellectuals, religious and voluntary organizations and some politicians also contributed to the increase in the income of the state's baitulmal. Seminars, forums and conferences were organized by these groups. Movements like ABIM (Malaysian Islamic Youth Movement) and PERKIM indirectly involved themselves in educating intellectuals, students and those who were beginning to understand the importance of this Islamic Treasury. The provision of tarbiyah (education) to students by ABIM for example is a very good approach indeed since these are the people who will form part of the workforce in the government machinery. Once they have the basic knowledge of baitulmal, wakaf and faraid, this will in the long term bring benefits not only to the government of the day but also to the village people, because of their role in channelling back the knowledge to their parents, relatives and friends in their kampong (Malay village). It may well be the case that the increase in the income of the state baitulmal resulted at least partly from this increase in the awareness of the Muslims.

(h) Problems Confronting Baitulmal Selangor

Before discussing the problems faced by the institution of baitulmal in Selangor, it is important

for us to analyse the relationship regarding Islamic Affairs between the State and the Federal government. The Malaysian Constitution under Section 3(2) indicates that the National Council on Islamic Affairs (established in 1966) are only vested with the power to advise and not to draft policies in matters regarding the states' religious affairs. This dichotomy of interest has had a considerable effect on the performance of an institution such as the state baitulmal. In all cases the planning and the set-up of the baitulmal is under the jurisdiction of the state government through the Majlis it has created.

The refusal of some states to participate in the Council has complicated matters considerably. As a result of their attitude, Islamic law regarding the state baitulmal and wakaf is not uniform. Some Sultans who are the Religious chiefs of their respective states have their own fatwa and style of managing their subject's Islamic Affairs. Fortunately, Selangor is a member of the Council which sits together and tries to solve the problems faced by the ummah at both state and Federal level.

Perhaps the most unfortunate aspect of State/Federal relations with reference to the institution of baitulmal is the method adopted in revenue collection at both State and Federal level. The bulk of the

country's revenue is monopolised by the Federal and State Treasury whereas the state baitulmal is not involved at all in the revenues collected from various sources of income by the state. As a result of this separation, the sources of income for the state baitulmal are fairly small. This situation nullifies the theoretical premise that under Islamic Law the baitulmal is a Public Treasury into which income derived from the state should be channelled.¹²¹ This circumstances greatly limits the scope and functions of the baitulmal.

Then there is the question of perception and awareness shown by the members appointed to sit in the Majlis towards the institution of baitulmal itself. Some prefer to adopt a conservative approach without offering any new ideas for the betterment of the institution. There are instances where the members of the Majlis appear to have a negative image of the baitulmal itself, perceiving it as a small Islamic welfare treasury, playing an unimportant role in the welfare of the Muslims in the state.

In general, the writer is of the opinion that most states in the country are beset with this type of problem, and the attitude described above can be said to be the main obstacle to the smooth functioning of the baitulmal in the true sense of the word.

In Selangor, in addition to this problem, there are other dilemmas faced by the state baitulmal.

Firstly, as regards the organisational structure of the institution, the two sections, the Zakat and General Resources Unit need to be reorganised in order to be better coordinated not only with themselves but with the work of the Majlis itself, and the Committee on Baitulmal and Zakat. They must have qualified personnel to run the organization who are also capable of making decisions in accordance with the concept of ijtihad.¹²² So far, out of the 14 members in the organization, only 4 have religious qualifications and as a result most of the decisions made are on a majority basis. In addition, the number of staff is very small indeed considering the fact that they have to administer the zakat/fitrah involving one million Muslims and 13 districts in the state.

The second problem is the weakness of the legislation which has been enacted for baitulmal in the state. The Majlis is powerless, for example to investigate the income of an individual Muslim in Selangor, especially in relation to the number of houses or total acreage of land possessed.

Thirdly, the collection system adopted by the Majlis for zakat itself is obsolete and mainly confined to zakat

fitrah. Sadly only 17% has been collected from zakat on property and businesses. There is a need for the definition of zakat on property to be expanded so that it can encompass a larger area of business activities.¹²³

Fourthly, the system of redistribution appears to be in a shambles, without any proper planning of payment to the asnaf. No concrete development has materialised in helping the poor.

Finally, the problem of the location of the baitulmal headquarters itself should be considered.¹²⁴ It is not easily accessible to the members of the public, especially to those living away from Shah Alam where the office is located. It appears that the location of the office is somewhat isolated. What the Majlis could do is to set up baitulmal offices in small towns and if possible in shopping complexes as is being done by the Baitulmal of the Federal Territory.¹²⁵

III. Zakat

(a) The Concept of Zakat

Since the concept of zakat will be involved quite a number of times during the discussion of baitulmal, a definition of this term will be desirable.

The literal meaning of the word zakat is 'purification', 'growth', or 'blessing and praise', as used in the Koran and Hadith.¹²⁶ It means purification because the Muslim who pays zakat will purify not only himself but also whatever properties he possesses. As for 'growth', this refers to the recipient poor who are expected to 'grow' on it, or more likely is an expression of hope that it will be more than compensated for,¹²⁷ by Allah's blessings as explained by the Koran:

'The likeness of those who spend their wealth in Allah's way is as the likeness of a grain which grows seven ears, in every ear a hundred grains. Allah increases manifold to whom he will. Allah is all-Embracing, all Knowing.'¹²⁸

(b) Zakat Activities in Selangor

As with baitulmal, in an endeavour to streamline the zakat activities and its administration a unit called Yunit Zakat or Zakat Unit was established by J.A.I.S.

Yunit Zakat (Zakat Unit)

The establishment of this unit was in accordance with the state law contained in three Sections of the Selangor Administration of Muslim Law Enactment of 1952/amended 1972. The Sections involved are Section 107, 108 and 109.¹²⁹

Section 107 empowers the Majlis with the approval of the Sultan to collect zakat/fitrah which is wajib (obligatory in Islam) to all Muslim residents in Selangor. The amount collected will then be distributed to the needy in accordance with Hukum Sharak as mentioned earlier. As will be seen later, although the payment of zakat/fitrah is compulsory, quite a number of Muslims in the state appear to have a lethargic attitude to fulfilling this Islamic duty, particularly in the payment of zakat.

Section 108 (1) empowers the Majlis to impose the necessary regulations in relation not only to the collection of zakat/fitrah but also to the administering and discharging the revenue to the rightful recipient.¹³⁰ There are some similarities between this section and the one above.

Section 108 (2) empowers the Majlis to regulate the following;

(1) to decide from time to time the amount of zakat/fitrah that should be paid by the Muslims in the state.¹³¹ The unit has already approved the payment of zakat/fitrah in either the form of beras (raw husked rice) weighing 2.27kg.¹³² or the equivalent amount in the form of cash. This rate of payment has been continuously reviewed and changed since 1952 in order to be in line with the rate of inflation in the state. The prescribed amount to be paid to the amil (fitrah collector) is printed and circulated by the religious department through the district offices, community halls, penghulus and notices board located in the compound of the mosque and surau. Each individual villager must pay within their own kariah and technically they are not allowed to cross over into another kariah masjid in making their payment of the fitrah.

The nature of payment of the zakat/fitrah by the Muslims in Selangor depended in most instances upon the locality of the nine districts. In the rice bowl districts of Sabak Bernam and Kuala Selangor, people usually paid their zakat/fitrah in the form of beras whereas in the more urbanised districts like Klang, Petaling, Gombak and Ulu Langat, the majority found it

more convenient to make the payment in cash. In Appendix D shows the total income received by the Majlis from the various nature of zakat and fitrah in the state from 1970-83 while Appendix E shows the breakdown in the income of zakat and fitrah from all the districts, sub-districts and the armed forces personnel in the state from 1978-83.

The zakat padi is mainly imposed upon the farmers in the rice bowl districts of Kuala Selangor, Sabak Bernam, Ulu Langat Gombak and Kuang. The calculation adopted by the Majlis on each individual acre of padi field's output is approximately 1,800kg (500 gantang). The Majlis will impose 10% from the total output for zakat padi after deducting the cost of expenses incurred such as the cost of fertilizers, rent and labour.

(2) to decide the most appropriate method in the collection of zakat/fitrah.¹³³

(3) to appoint representatives who will act as agents (amil) for the the Majlis in collecting zakat/fitrah.¹³⁴ In most cases as indicated earlier, the district kathi after conferring with the Jawatankuasa Masjid or mosque committee of a particular kariah will submit the name of the individual they selected to the Majlis for the appointment as an amil. He will then be

presented with the surat tauliah (appointment letter) from the Majlis.

(4) to decide on the nature of the penalty to be imposed on individuals who act as an independent or self-appointed amil in collecting zakat/fitrah from the Muslims in Selangor.¹³⁵ This is a difficult section to deal with due to the fact that the Majlis itself does not possess the required manpower to prevent the occurrence of such incidents.

In some remote villages in the district of Kuala Langat, in the experience of the writer, there are irresponsible individuals who (either for personal gain or through political motivations) tend to make the work of the Majlis somewhat difficult. Such individuals usually promote the idea that it is sinful to pay zakat/fitrah to a department established under an unIslamic constitution. The response to this type of argument is quite considerable and some sections of the Muslim population even perceive the Majlis as manipulating the funds collected for the political purposes of the ruling party. Another observation by the writer is the preference shown by a considerable number of people for paying their fitrah to their poor relatives and those in the same position within their neighbourhood. They feel that they can get more blessing

from Allah by helping their own relatives and neighbours than by paying their fitrah to the government, which in their perception does not redistribute the money collected to those who are really in need. Unlike the situation in Kelantan where the Religious Department has given some freedom to the Muslims to pay their fitrah as they wish, the Muslims in Selangor have to pay direct to the state government through the Majlis. Often, the penghulus and state assemblymen try to persuade the villagers to abide by the rules and regulations laid down by the Religious Department but are not heeded. In fact many villagers are not afraid of the possibility of being fined or imprisoned. The claim that fitrah is payable only under Muslim Law as seen by the majority in the rural areas seems to reinforce their conviction that Islam gives the individual Muslim a free choice as to how he shall make his payment.¹³⁶

Under Section 109, the Majlis can consider appeals from those who feel that the amount of zakat/fitrah to be paid is unjustifiable.¹³⁷ However, the amount by the Majlis is usually generally agreed to by the Muslims in the state and the decision made by the Majlis on to this matter is final.

Standard Rate for the payment
of zakat/fitrah from 1970-80

<u>Year</u>	<u>Payment to be made</u>
1970-72	M\$1.20
1973	1.50
1974-78	1.70
1979	2.00
1980	2.10

Source: Statement for the payment of zakat/fitrah,
Jabatan Agama Islam Selangor

The payment is made on the basis of a flat rate on all income.

(1) Nature of Property where zakat is due
Selangor

The nature of property upon which zakat is payable in Selangor is divided into two categories, namely zakat/fitrah and zakat harta or property zakat. Zakat/fitrah has been dicussed earlier. Produce such as padi, gold, silver, currency, merchandise and goods and the breeding of livestock are all part of zakat harta.¹³⁸ The collection of zakat on these forms of property in the 70's is not very significant as compared to the revenue received from zakat/fitrah which is the largest single form of income collected by Baitulmal Selangor. Indeed we

can say that without the contribution made by the revenue of zakat/fitrah, the financial position of the Majlis in relation to the state's baitulmal would be very weak.

(2) Methods adopted for the collection and redistribution of zakat/fitrah

The methods used in the collection of zakat/fitrah in the country as a whole and Selangor in particular are almost identical. In Selangor, the collection is done by the appointed amil, who is the closest administrative government official to the people at the village level.¹³⁹ The amil provides the vital linkage between the Majlis and the Muslim society at large. The performance in the collection of zakat/fitrah for a particular kariah actually depends upon the integrity and conscientiousness of a particular amil in influencing the people fulfil this Islamic obligation.

(3) The Beneficiaries of Zakat/Fitrah in Selangor

In making payments to deserving Muslims in Selangor from the zakat fund, the Majlis was trying to accomplish the requirements of Hukum Sharak stipulated in the Koran in Surat al-Tawbah, verse 60, which runs as follows;

• It is not righteousness
That ye turn your faces

Towards East or West;
 But it is righteousness-
 To believe in God
 And the Last Day,
 And the Angels,
 And the Book,
 And the Messengers;
 To spend of your substance,
 Out of love for Him,
 For your kin,
 For orphans,
 For the needy,
 For the wayfarer,
 For those who ask,
 And for the ransom of slaves;
 To be steadfast in prayer,
 And practice in regular charity;
 To fulfil the contracts¹⁴⁰
 Which ye have made;'

This verse indicates the eight asnaf or classifications of individuals who are the legal recipients of zakat funds. The Quranic classification of these zakat beneficiaries into eight categories does not however necessarily require that it should be divided into eight equal parts or that all the eight classes should be found to receive it. What it does do is to enumerate the beneficiaries and to indicate that none other than these prescribed categories are entitled to deserve any share from the proceeds of zakat.¹⁴¹ The definition of these eight asnaf will be briefly discussed in the following pages.

(1) Fuqarā' or Fakir

The 'poor' known in Malay as fakir are those who do not own a nisab (minimum taxable property) or for that matter who own a nisab of unproductive property which is wholly needed for the satisfaction of first necessities or debts.¹⁴² The term can also refer to a class of poverty-stricken individuals who are in need of help.¹⁴³ The Majlis have its own interpretation of the meaning of fakir, i.e. those type of people who do not possess any property at all and are incapable, either physically or mentally, of performing any permanent job.¹⁴⁴ As far as the district of Kuala Langat is concerned, the numbers of this class of people are not high in comparison to other districts in Selangor.

(2) Masākīn or Miskin

There is not much contrast between this term and the one above except that the miskin are the 'indigent', or those who do not have anything, and who have to resort to begging in order to make a living and obtain enough clothing to conceal their nakedness.¹⁴⁵ According to Al-Ḥasan al Baṣrī, as quoted by Ziauddin, a miskin is more needy than a fakir because the latter does not require to beg, but the former goes begging due to his extreme destitution.¹⁴⁶

The Majlis defines miskin as those who make an effort to better themselves but do not receive sufficient income to meet the basic needs of everyday living.¹⁴⁷ An example would be a person who can earn only M\$3.50 while the basic decent cost of living is M\$5.00 per day, - and can thus be categorised as a miskin. The table overleaf indicates the contribution made by the Majlis from the zakat funds to these two asnaf recipients.

Redistribution of zakat/fitrah allocated for
the fakir and miskin in Selangor 1977-1982

<u>Year</u>	<u>Total Fakir</u>	<u>Allocation per person</u>	<u>Total Miskin</u>	<u>Allocation per person</u>
1977	4214	\$191	14,828	\$54
1978	5024	174	14,726	59
1979	5678	171	14,708	66
1980	5519	216	13,625	87
1981	5834	240	14,235	98
1982	5437	327	13,998	127

Source: Statement of redistribution for zakat/fitrah
by JAIS, 1984.

(3) 'Āmilūn or Amil (the collectors)

These are the individuals appointed by the imam or at the present day, the government, for the collection of the zakat taxes. To the Shafi'i school of thought, the collectors are paid at the current rate of wages out of the eighth set apart as the collector's share. This school also held the view that if the share is insufficient, their wages should be made up from the other shares on the condition that there is a surplus of funds available.¹⁴⁸

In Selangor, as explained earlier, the amil is appointed through the mosque and surau committees. The one-eighth payment is made directly to the amil without being referred to the Majlis. In relation to the collection of zakat padi, the amil collecting this form of zakat will be paid in kind. (usually in the form of beras).

(4) Mu'allafah qulūbuhum or muallaf

Literally, these are people whose hearts have been conciliated.¹⁴⁹ During the lifetime of the Prophet S.A.W., there were three classes of people categorised as muallaf. Firstly, the class of people to whom the

Prophet S.A.W. used to give from the proceeds of zakat in order to draw them into Islam.¹⁵⁰ Secondly, those who although already converted to Islam were weak in their faith and to whom the Prophet S.A.W. gave a share in order to strengthen them in the faith and, finally, to those to whom the Prophet S.A.W. gave a share in order to deter them from doing harm.¹⁵¹ These definition of the muallaf have been debated by the various schools of thought since the death of the Prophet S.A.W. They quote for example the action taken by 'Umar who refused to renew documents concerning these people's share on the grounds that Islam was already strong and no longer required to resort to such means of protection.¹⁵² In fact, Al-Shafi'i considers that it is not allowable to disburse the zakat to an unbeliever in order to draw him into Islam,¹⁵³ thus reinforcing the decision by 'Umar. He further asserts that zakat revenues are exclusively for the benefit of the Muslims and that no non-Muslim is allowed to be reconciled with the proceeds of the zakat.¹⁵⁴

Selangor's baitulmal in dealing with this concept of muallaf, bases itself on the actions taken by the Jawatankuasa Kecil Saudara Baru or Committee for the Newly Converted. This committee was set up in order to identify and determine the criteria for the definition of

a muallaf. In achieving its aim, the committee made efforts to give assistance to the muallaf in the following circumstances;

- (a) help for the poor by providing financial assistance.
- (b) help during emergencies and natural disasters.
- (c) circumcision (male only).
- (d) marriage.
- (e) attending religious classes.
- (f) field work in religious activities.
- (g) printing of religious pamphlets and magazines.
- (h) providing scholarships.
- (i) allowances for religious teachers.

Between 1951 and 1983, there had been a total of 5,000 new converts in Selangor, the largest number comprising Chinese (totalling 2,868) followed by Indians, (1,336) other races, normally Eurasians and Europeans, accounting for 700 and only 96 of the state aborigines or orang asli.¹⁵⁵ This last figure is not very encouraging. It appears that the Majlis was interested only in encouraging the Chinese and the Indians to convert to

Islam, leaving aside the aborigines who are mostly animists. Even then, its activities in dealing with these two races are supported by PERKIM or Pertubuhan Kebajikan Islam Malaysia (an organization dealing with the administration of all new converts in the country).

The life of these new converts in the state was not without its problems. From the writer's own experience most of them, particularly the Chinese were left in the dilemma of trying to assimilate into Malay society. Some Malays appear to have an apprehensive attitude towards the muallaf and the feeling of suspicion is always in their minds. More often, the problem faced by the muallaf exists not only with the Malays but also with their own family, relatives and friends who perceive them as traitors and outcasts from their race. Thus the muallaf are sandwiched between the arrogance of some Malays and the vindictive attitude of the Chinese. The Majlis needs to make a concerted effort to eradicate this situation by identifying the roots of the problem. One step that could possibly ease the situation would be to provide education and information concerning the need to accept these muallaf as brothers and sisters of the Malay Muslims. Even though there are efforts to assist these muallaf they are insufficient, considering the fact

that they have to forgo their religion, culture and way of life and move to a new environment with new requirements.

(v) Fi'l Riqāb or Rikab

Historically, the concept of rikab is defined as the freeing of slaves from the bondage of slavery.¹⁵⁶

In practical terms, the above situation does not exist in Selangor. However, the Majlis has its own analogy for identifying comparable situations. Its object is to relieve the burdens and hardships of individuals such as students studying locally or overseas, to give allowances to religious teachers in adult education classes and to offer assistance to families who are poor. These actions are in the opinion of the Majlis similar to the situation of freeing the slave from the bondage of slavery.¹⁵⁷

(vi) Al-Gharīm̄ or Gharim

The word Gharim connotes a person who is the entitled to assistance from the zakat after he has fallen into debt for the sake of Islam. The debt incurred must not take place as a result of unIslamic activities. According to Al-Shafi'i, the word gharim

means not only a person incurring debt for lawful personal reasons but also one who does so for the sake of public interest, like taking on a surety (hamālah), or by composing feuds and differences (islāh dhāt al-bayn).¹⁵⁸

In order to meet the criteria for a gharim, the Majlis spends zakat funds on expenses incurred in celebrating religious activities such as the Prophet's birthday, on assisting the purchase of miscellaneous equipment for suraus and mosques, and on the provision of financial assistance to students studying in religious schools at the tertiary level in all districts in Selangor.¹⁵⁹

(vii) Fī Sabīl Allāh or Fisabilillah

This is the way for the cause of Allah i.e. all the pious activities which secure the pleasure of God.¹⁶⁰ This can also refer to a person who fights in the jihad or holy war. Al-Shafi'i is of the opinion that zakat may be given to a fighter even if he is wealthy, as the Prophet said;

‘Zakat is unlawful for one who is self sufficient except in five cases: for a zakat official, or for a fighter in the

way of Allah, or a self sufficient person who buys it, or if a poor person after receiving an amount of zakat gives it to a rich person, or in the case of a debtor.¹⁶¹

In Selangor, the mosque and surau officials are regarded as individuals fighting for the cause of Allah.¹⁶²

(ix) Ibn Al-Sabīl or Ibnisabil

This concept refers to wayfarers or strangers who have lost their means of subsistence and have financial difficulties in reaching their destination. These people can get assistance from the zakat funds.¹⁶³

In order to meet this requirement, the Majlis normally give assistance to individuals travelling overseas who have a desperate need to reach their destination. The place of intention must not conflict with the interests of Islam. There are four kind of assistance provided by the Majlis;

- (1) Islamic students going overseas for higher education.
- (2) Assistance in cases of emergencies and accidents.
- (3) Islamic students pursuing higher education locally and,

- (4) Provision of school uniforms for Islamic students from a poor background.

There has been a lot of improvement in the administration of zakat in the state of Selangor. However, much more can be done especially in the collection of zakat particularly from well-to-do Muslims in the state.

NOTES TO CHAPTER 5

¹ Abū Yūsuf is one of the two disciples of Abū Ḥanīfah (d.182). The other is Imām Muḥammad (d.189), quoted by Mohd. Zain, Islamic Law With Special Reference to Wakaf, (Kuala Lumpur, 1982), p. 24.

² Syed Ameer Ali, Mohammedan Law, Tagore law lectures, Vol. 1 (Calcutta, 1929), p. 195.

³ Gibb & Kramer, Encyclopedia of Islam, s.v.

⁴ Ameer Ali, op. cit, p. 193.

⁵ Ibid.

⁶ Malaysia Official Year Book, 1964, p. 623. Also in some state enactments, waqf is spelt wakaf.

⁷ The Tuhfat al-Muhtāj was in fact used as a textbook in pondoks long before the Minhaj at-Talibin, but has only been used as a source of reference, and then only rarely, by the J.A.I.S. in the last ten years.

⁸ Nawawi, Minhaj- et- Talibin, p. 231.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Abdul Aziz Zaid, The Law of Bequest, (London, 1986), p. 165.

¹² Ibid.

¹³ Op. cit, p. 167.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Reported by Anas b. Mālīk, Al-Bukhārī, Sahīh (Cairo), p. 137.

¹⁷ Abdul Rahman Doi, Shariah, The Islamic Law, p. 338.

¹⁸ Muslim, Wasiyyah 14;

¹⁹ Quoted by Ziauddin Ahmad, 'Waqf as an instrument of perpetuity - an assessment', in Islamic Studies, 26:2 (1978), p. 125.

- 20 Gibb & Kramer, op. cit. loc. cit.
- 21 Doi, op. cit. loc. cit.
- 22 Gibb & Kramer, op. cit., p. 1096.
- 23 Syed Othman Alhabshi, 'Konsep Wakaf dan Perlaksanaannya diMalaysia', Seminar Kebangsaan Pengurusan dan Pentadbiran Harta-Harta Wakaf, November, 1986, Ipoh, Malaysia.
- 24 Abdul Aziz, op. cit., p. 167.
- 25 Mohd. Zain, Islamic Law with Special Reference to Wakaf, (Kuala Lumpur, 1982), p. 37.
- 26 Ibid.
- 27 Ibid.
- 28 Q. Sūrat al-Baqarah, 11:267.
- 29 Al-Shirwānī, Hāshiyah Tuḥfat al-Muḥtāj li-Sharḥ al-Minhāj, Vol. VI, 1938, p. 231 as quoted by Mohd. Zain.
- 30 Ibid.
- 31 Nawawi, op. cit., p. 230.
- 32 Ibid.
- 33 Ibid.
- 34 Ahmad Ibrahim. Islamic Law in Malaysia, (Singapore, 1965), p. 277.
- 35 Nawawi, op. cit. loc. cit.
- 36 Ibid.
- 37 Example, Shafi'i, as quoted by Mohd. Zain, p. 55.
- 38 View of Khallāf and others, see Mohd. Zain, p. 56.
- 39 Ibid.
- 40 Mohd. Zain, op. cit., p. 57.
- 41 loc. cit. Al-Ṭarābulusī as quoted by Mohd. Zain, op. cit.

- 42 Ibid.
- 43 Gibb & Kramer, op. cit, p. 1096.
- 44 Ibid.
- 45 A.Suhrawardi, "The Waqf of Movables", Journal of the Royal Asiatic Society of Bengal, June, 1911, Vol. VII, p. 344.
- 46 See A. Fyzee, Outlines of Muhammadan Law, (Oxford, 1955), p. 247 on the views of Abu Yusuf and Imam Muhammad.
- 47 Al-Haythamī in Fatawā al-Kubrā, III. p. 293, as quoted by Mohd. Zain on p. 79.
- 48 Abdul Raham Doi, op. cit, p. 340.
- 49 Ibid.
- 50 Ibid.
- 51 Ameer Ali, A Short History of the Saracens, (London, 1951), p. 422.
- 52 Norman Anderson, Law Reform in the Muslim World, (London, 1976), p. 162.
- 53 Ibid.
- 54 Norman Anderson, 'Recent Developments in Sharia Law IX: The Waqf System', The Muslim World, p. 257.
- 55 Ibid.
- 56 Nawawi, op. cit, p. 233
- 57 Ahmad Ibrahim, op. cit, p. 281.
- 58 Fyzee, op. cit, p. 269.
- 59 Syed Abdul Majid, Waqf as Family Settlement among the Muhammadans, p. 128
- 60 Ahmad Ibrahim, op. cit. loc. cit.
- 61 Certainly in some parts of Malaysia.
- 62 Fyzee, op. cit, p. 233.
- 63 Tyabji Faiz Badruddin, Muhammadan Law, (Bombay, 1940), p. 496.

64 Study conducted by Pusat Islam or Islamic Centre of the Prime Minister's Department, 1979.

65 Interview conducted by the writer with Tuan Haji Kamarulzaman Habib.

66 (1) wakaf khas means a dedication in perpetuity of the capital of property for religious or charitable purposes recognised by Muslim law, and the property being paid to persons or for purposes prescribed in the wakaf.

(2) wakaf 'am means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Muslim law, and the property so dedicated.

(3) nazr 'am means a nazr or vow intended wholly or in part thereof, as opposed to an individual or individuals.

67 Administration of Muslim Law Enactment, Selangor No. 3 of 1952, p. 1421.

68 Ibid.

69 Kariah means: the area prescribed by the Council of Religion within which a mosque is situated.

70 Under the Enactment, pegawai masjid means the nazir, imam, khatib and bilal of the mosque.

(a) a bilal is the one who perform the azan (called for prayers).

(b) a khatib is normally the bilal's assistant.

71 Selangor Administration of Muslim Law Enactment, Section 118 (1), No. 3. 1952.

72 View given by Haji Mohyi, the officer in charge of wakaf in Selangor on 4.4.1987 at J.A.I.S., Shah Alam.

73 Ibid.

74 File No. 7028A of J.A.I.S.

75 Seminar Wakaf, p. 24.

76 Ibid.

It is estimated that the average cost of rented property in a town like Malacca ranges between M\$1,000-5,000 per month.

77 Haji Mohyi, op. cit. loc. cit.

- 78 Abdul Rahman Doi, op. cit, p. 387.
- 79 Ibid.
- 80 Nicholas P. Aghnides, Mohammedan Theories of Finance, (New York, 1916), p. 423.
- 81 S.M. Imammuddin, 'Bayt-al-Mal and Banks in the Medieval Muslim World', Islamic Culture, January, 1960, p. 22.
- 82 Ibn al-Faradī, The Kitāb Tārīkh 'Ulamā' al-Andalus, VII, (Madrid, 1891), as quoted by Immauddin, p. 23.
- 83 Ibid.
- 84 Siddiqi, Public Finance in Islam, (Lahore, 1952), p. 171-2.
- 85 Imammuddin, op. cit, p. 26.
- 86 Ibid.
- 87 Ahmad Ali, quoted by Immamuddin, p. 26.
- 88 Aghnides, op. cit, p. 430.
- 89 Ibid.
- 90 Ibid.
- 91 Salleh Buang, Legal Essays on Islamic Fiscal and Property Laws in Malaysia.
- 92 Abū Yusūf, al-Kharāj, p. 19 as quoted by Hailani Mujir Tahir, Baitulmal, Institusi Negara Islam, (Kuala Lumpur, 1982), p. 13.
- 93 Op. cit, p. 19.
- 94 Op. cit, p. 13
- 95 Ibid.
- 96 Ibid.
- 97 Hailani, op. cit, p. 14.
- 98 Al-Māwardī, al-Ahkām, p. 215-218 as quoted by Hailani, p. 324.
- 99 Ibid.

- 100 M.A. Mannan, Islamic Economic Theory and Practice, (Lahore), p. 309.
- 101 Reported by al-Tabarī as quoted by Hailani, p. 16.
- 102 Interview with Kamarulzaman Habib.
- 103 In Malaysia, the term zakat/fitrah connotes the payment of zakat in the form of rice usually 1 gantang which is equivalent to 3lb or cash payment equivalent to the amount of rice stipulated. Payment is normally made during the month of Ramadhan to an amil appointed by J.A.I.S.. The most popular method used for payment is in the form of cash to the amil in the mosques and surau especially from the 15th of the Ramadhan month onwards until the night of Shawal.
- 104 Abdul Rahim Salleh, Pentadbiran Undang-Undang Baitulmal Majlis Agama Islam Selangor, B.A. Thesis, Univeristi Malaya, Petaling Jaya, p. 12.
- 105 Selangor Muslim Administration Enactment, 1952, p. 1421.
- 106 Rafei, op. cit, p. 89.
- 107 Op. cit, p. 106.
- 108 Op. cit, p. 108.
- 109 Abdul Rahim Salleh, op. cit, loc cit.
- 110 Ibid.
- 111 Information quoted from the file of Section Baitulmal/Zakat and Finance, Majlis Agama Islam Selangor.
- 112 Salleh, op. cit, p. 17
- 113 Ibid.
- 114 Ibid.
- 115 Op. cit, p. 18.
- 116 Ibid.
- 117 Ibid.
- 118 Hailani, op. cit, loc. cit.

- 119 Malaysia: Mid-Term Review of the Second Malaysia Plan, 1971-1975, p. 1.
- 120 Mini Working Paper entitled Harta Amanah Kolej Islam at the Islamic Faculty, National University of Malaysia, Petaling Jaya, 1977.
- 121 Hailani, op. cit. loc. cit.
- 122 Abdul Rahim Salleh, op. cit. loc, cit.
- 123 Ibid.
- 124 Ibid.
- 125 Ibid.
- 126 Ibn Manzūr, Lisān al-ʿArab, (Beirut 1965), xiv, p. 352.
- 127 Mohd. Nor bin Ngah, 'A Preliminary study of the institution of Zakat in Malaysia', Islamika III, (Kuala Lumpur, 1985, p. 224.
- 128 Q, II: 261,
- 129 Zahariah Sulaiman, Penyelenggaraan Kutipan dan Penagihan Zakat diSelangor, B.Econ. Thesis, Universiti Pertanian Malaysia, Serdang Selangor, Malaysia, p. 29.
- 130 Ibid.
- 131 Ibid.
- 132 Ibid.
- 133 Ibid.
- 134 Ibid.
- 135 Ibid.
- 136 Mohd. Nor Ngah, p. 225.
- 137 Ibid.
- 138 Abdul Rahim Salleh, op. cit, p. 38.
- 139 Mohd. Ruffi Eean, Peranan Ekonomi Zakat Dalam Mengatasi Masaalah Kemiskinan (Kes Jabatan Agama Wilayah Persekutuan dan Jabatan Agama Islam Selangor), B.A. Thesis, Universiti Kebangsaan Malaysia, Bangi, Selangor Darul Ehsan.

140 Q, II: 177.

141 Ṭabarī, Tafsīr, commentary on verse 60, Sūrat al-Tawbah as quoted by Ziauddin Ahmed, 'Zakat and Economic WellBeing', Islamic Studies, Vol. XX 1981, No. 1, p. 30.

142 Aghnides, op. cit, p. 440.

143 Ziauddin, op. cit, p. 23.

144 Zahariah, op. cit, p. 3.

145 Aghnides, op. cit, 443.

146 Ziauddin, op. cit, loc cit.

147 Zahariah, op. cit, p. 53.

148 Aghnides, op. cit, p. 445.

149 Op. cit, p. 449.

150 Ibid.

151 Ibid.

152 Ibid.

153 Ibid.

154 Ziauddin, op. cit, p. 25.

155 Zahariah, op. cit, . 55.

156 Ziauddin, op. cit, loc. cit.

157 Ibid.

158 Ibid.

159 Zahariah, op. cit, p. 56.

160 Ziauddin, op. cit, p. 28.

161 Ibid.

162 Zahariah, op. cit, loc. cit.

163 Ziauddin, op. cit, p. 29.

CHAPTER 6RECOMMENDATIONS AND CONCLUSIONRecommendations.

Muslim scholars in Malaysia have always criticised the fact that the nature of the National Land Code (Kanun Tanah Negara) contradicts the concept of the Islamic land law.¹ They have levelled most of their criticisms at the clauses involving uncultivated land (mawat) and the customary law which clearly contradicts the Islamic law of inheritance (this is mainly in the states of Negeri Sembilan and Malacca). They feel that the time has come for the Federal Government to cooperate with the states in restructuring the National Land Code so that it will be more attuned to the concept of Islamic land law. This unfortunate situation has had a considerable effect on the implementation of faraid, wakaf and baitulmal in the states as we have seen in the earlier discussion, and the state of Selangor is no exception.

It seems clear from the present study that the problems confronting the implementation of the Islamic land law in Selangor are bound up with three major issues. These three issues which have contributed to the problems of the implementation of faraid, wakaf and

baitulmal are the legal, administrative and social difficulties which have hindered the effective and smooth functioning of the administration of these Islamic concepts and accounted for most of their negative aspects.

In outlining possible recommendations, it is felt that the best approach is to discuss the subjects individually although the three concepts interlock and cannot be completely isolated. As far as the state of Selangor is concerned, the administration of the three is inter-related, because all are under the supervision of one governing body, the Majlis Agama Islam Selangor.

In Chapter 3, it was pointed out that the powers of the shariah courts and the kathis were curbed and superseded by the civil courts and judges whose legal training derived from a non-Islamic tradition. The imbalance of legal power between the institution of the shariah courts and its officials and those in the civil sphere has been criticised by many well known legal scholars, among them Professor Ahmad Ibrahim . In fact the shariah courts, in the context of the Malaysian legal system, have remained in a state of stagnation even after the country achieved its independence. The situation is very similar to that under British rule when the shariah courts were always in a subordinate position.² Since

independence little effort has been made by the Federal and state governments to upgrade the status of these courts, so that decisions which warranted the full implementation of the Islamic land law could be enforced. The plight of these courts was highlighted by suggestions made by Ahmad Ibrahim again in a conference on 11. November 1986.³ Among his suggestions were included the abolition of the Civil Law Act of 1956. He called on the government to include a clause in the Malaysian Constitution which should stipulate the following;

'whatever law is in conflict with the Islamic law on matters pertaining to land, it should be regarded as null and void as to the extent to which that level of conflict occurs.'⁴

For a start, Ahmad Ibrahim proposed that the status of the shariah courts and the kathis should be at par with those in the civil legal profession. A year later, his suggestion was reinforced in another seminar⁵ in which the Chief Kathi of the Federal Territory gave his opinion that a committee should be formed to formulate Islamic Law for the states. Syeikh Ghazali Abdul Rahman, the Chief Kathi who suggested this, reiterated that there was a need for such a committee which should comprise representatives from the State Religious Affairs

Departments, legal advisers, the Attorney General's chambers, the National Council for Religious Affairs and members from among scholars and lawyers. He reminded the Federal government of the various proposals made by the appointed steering committee which calls for the raising of the status and position of the kathis and the shariah courts. There was also a need to set up a Federal Shariah Appeal Court whereby Islamic judges could be stationed in Kuala Lumpur and their salaries and allowances be paid by the Federal government. The appointment of such judges should be made by the Council of Rulers.

The above recommendations were finally approved by the Malaysian Cabinet in March, 1988.⁶ In making the announcement, Dr. Yusof Noor, the Minister in the Prime Minister's Department, indicated that the Federal government had already approved the setting up of the mahkamah syariah (shariah courts) at all the three levels, namely the lower, higher and the Appeal levels. Decisions made by the shariah court would no longer be referred to the civil courts for any appeals. He further stressed that the decision was reached and agreed upon by all members of the Malaysian Cabinet which also includes non-Muslim Ministers.

The decision by the Federal government to set up such courts should eventually eradicate the problem of

a legal dichotomy between the shariah and the civil courts. It will have an important impact on the settling of wasiyat cases which often involve a lengthy wait for the final decision from the civil courts. Even though in practical terms the decision has yet to be implemented, the writer is optimistic that it will achieve a high level of success considering the fact that there are 'winds of change' in the attitudes of the Menteri Besar or state Chief Ministers towards a uniform Islamic legal system in the country (perhaps with the exception of Negeri Sembilan where Adat pepateh still continues to dominate the state's land law). Kathis have been sent by the Selangor government to widen their legal knowledge at the International Islamic University at Petaling Jaya. The Faculties of Law in most local universities seem to have broadened the scope of Islamic law subjects in order to cater them to the needs of Federal and state governments for more qualified personnel in the Islamic legal field. Perhaps the most notable decision taken by any government is the decision of Selangor to grant the Mufti the status of a member of the Executive Council of the Selangor government (EXCO) on an Ex-Officio basis. He will form part of the Selangor team in all aspects of state administration. Selangor is the first state in the country to adopt such a policy. In general the efforts

made by the Federal government to uplift the status of the shariah courts and their personnel should be applauded.

One of the most critical Acts which has frequently impeded the administration of faraid is the Small Estate Distribution Act of 1956 which has been discussed at great length in this thesis. Despite several amendments made by the government to streamline it and attempts to make it more efficient, there are still loopholes that impede the full implementation of the Islamic law of Inheritance. There are various sections in the Act itself which should be amended. Sections which have been proposed in principle for amendment have yet to be modified by the government. These include the following;

Section 3(2) whereby the value of the estate in question should be raised from the original sum of M\$300,000 to M\$600,000. This proposal if implemented will not only solve the problem of dealing with Malay land valued over the lower figure but will also bring the Act into line with the Estate Duty Enactment of 1941 which was amended and approved on the 21st October, 1983.

Section 9, which does not give enough power to the Small Estate Officers and the Assistant District Officer to prosecute waris for failing to attend hearings when

they are required to do so. Proposals have been made to prosecute these individuals under Section 175 and 176 of the Penal Code and the writer tends to agree with this proposal. The proposed section 11A which will put more pressure on the waris to attend a hearing should solve the problem. This is because from the experience of the writer, Malays normally take legal summons seriously, especially if they come from a government institution.

Section 12, whereby the Small Estate Officer or the Assistant District Officer should no longer have to wait for approval from the Director of Lands and Mines in order to reopen a particular faraid case to establish further evidence. If carried out this will undoubtedly shorten the administrative process of faraid and avoid further delays for the simple reason that the officer will acquire the necessary powers to reopen the case himself.

There is also a need to amend Section 14, under which any collateral dispute among waris has to be referred to the high court within two months, although of course, the court takes a longer period to make its decision. What should be done is to abolish the procedures of appealing to the High Court and to empower the officer concerned to make the final decision.

Perhaps the most important section which, in the writer's view, should be amended in order to achieve maximum efficiency in the administration of faraid is the Section which deals with lands which are too small for distribution. This has been the most depressing problem to confront the officers. Section 15 should be amended, and there are three proposals which the government should consider seriously.

Firstly, the officers dealing with faraid should be vested with the necessary powers to order the sale of such land. This can be done through the process of public auction. The proceeds from such auction will then be distributed to the waris concerned in accordance with the shares stipulated under faraid. In fact this proposal was agreed by the Islamic Council.

Secondly, the officers should also be empowered to make the necessary order for the land to be sold by tender among the waris in such manner as may be prescribed, but subject to a reserve price determined by the officer.⁷ It shall not be less than the market value of the land or part of the land as the case may be at the date of the tender.⁸ This is indeed another important proposal that the government should consider due to the

fact that much Malay land falls under this heading. It will certainly minimise the occurrence of fragmentation which is very uneconomical.

Finally, on the issue of nomination for pensions etc. which have not been altered to take account of changed situations, (as in the case of a first wife who maintains that she is the sole beneficiary of her husband's savings), the officer should be given additional powers to deal with this type of problem. There must be laws enabling the officer to force this type of individual to hand back the funds so that a fairer distribution among other legal beneficiaries can be carried out. If this is approved, the officer will no longer act merely as an adviser to the victim of such circumstances, but also will be able to invoke powers that will benefit those who have suffered from such situations.

As for the need to upgrade the administrative machinery of faraid, the most important factor that should be taken into consideration is the availability of qualified personnel, adequate facilities and the status accorded to the institution of the Small Estate Office itself. There is no point in the government urging the staff to work hard and increase productivity if they do not take into consideration the common basic needs of

job satisfaction, financial incentives and prospects for promotion. Politicians should also have a gentler approach in trying to overcome the problems associated with faraid such as being less arrogant and being willing to listen to the officials' views on complex cases. The time has come for the institution of the Small Estate Office to be given the same priority and status as is given to other government agencies and departments. There is an urgent need for a complete overhaul of the career structure and pay scheme for Small Estate Officers. They must be given the opportunity to broaden their Islamic legal knowledge, similar to the proposal made for the kathis.

Apart from the normal method of giving in-service training to these officers, the government should consider expanding the use of computers and specialised calculators, especially for the calculation of faraid shares, not only by Small Estate Officers but also by district kathis. When calculating complex faraid shares such as the problem of tanasukh, a term used to describe a situation whereby the heirs died one after another, and so cancelled their right to inheritance,⁹ the specialised calculator should be able to minimise the problem.

It is a generally accepted view that the Malays on the whole are an obedient, well-mannered people and generally are committed towards the teachings of Islam. In order for the government to make this people more conscious of the workings of faraid and its importance in protecting their properties, the state governments should conduct a religious campaign in the villages, explaining to them the best ways of settling their land problems and the Islamic method of distributing their small acres of land, always giving them the most important piece of advice, which is for them to make a wasiyat. Probably the best way of putting the message across would be to utilise the local mass media and radio stations. Most villagers have either a small television set or at least a radio in their homes. Where electricity supply has not reached remote villages, the state government could make use of the Ministry of Information, who have mobile units, usually based on a British built Land Rover, to help deliver the message. The government should start formulating a Will Ordinance for the Muslims in the country so that it will be able to solve the problem of wasiyat cases without much delay.

Another proposal concerns the mental attitude of the villagers towards understanding the faraid process. They have the habit of taking things too easily when confronted with land problems, and they try to take the

easiest way out by referring the matter to unlicensed petition writers. In an effort to revolutionise their attitude, the Selangor government should award financial and promotion incentives to officers who can induce and encourage villagers in their respective areas to respond positively to government calls for cooperation, especially during the conducting of the hearing. There must be close rapport in the relationship between the villagers and the officials dealing with this matter. A friendly atmosphere should be maintained between the two parties. There are often some officers who are arrogant towards the villagers, as a result of which the villagers are too frightened to air their problems and instead turn to the services of the petition writers.

The attitude of some of the non-religious government officials, especially those dealing indirectly with the faraid process, should also be taken into consideration. Religious lectures should be held weekly in order to instill the spirit of working towards the cause of Islam so that the feeling of confidence and positiveness towards the working of faraid can exist. After all these officials are mostly Malays and there should be no question of any difficulties in convincing them. In the district of Kuala Langat, from the writer's experience, the state Mufti was invited by the District Officer himself to deliver lectures to the district

office staff once a week , every Friday morning. The topics of these lectures usually centred around the concept of trust in dealing with the members of the public and more importantly some of the aspects of Islamic land law, including the giving of more information about the workings of faraid, wakaf and baitulmal. This move should be followed by the other districts in the state.

With reference to the administration of wakaf, the situation is similar to faraid in that it needs to be overhauled in order to create an efficient system of administration.

In Selangor there is a need to make an in-depth study of the location of wakaf land. This study will enable the Majlis to identify wakaf land which is suitable for development and decide what can be done to the best ability of the Majlis with unproductive wakaf land in the state. The wakaf section established by the Majlis should be sub-divided into units for development, planning and investment. A team of qualified personnel should be assembled, comprising not only religious officials but also members who have been successful in the echelons of management and successful

businessmen. The admixture of experience among these individuals should give an impetus to the development of wakaf properties in the state.

There should also be an independent watchdog appointed by the State government to supervise the activities implemented by the members of the Jawatan kuasa Kariah Masjid or Mosque committee members. This has been a thorny problem in the administration of wakaf properties at the district level. Surprise investigation and spot checks by independent auditors appointed by the Majlis should be carried out on the work done by these elected members, with the aim of maintaining a clean and efficient administration of wakaf properties.

In our earlier discussion of the nature and location of wakaf land in Selangor, we have seen the vast potential areas in the districts which can be tapped for future development. At these sites, the Majlis should follow the example shown by the Baitulmal of the Federal Territory. On these were built women's hostels, flats and single storey terrace houses for rent. The writer is of the opinion that wakaf lands which are located near Free Trade Zones (FTZ)¹⁰ are eminently suitable for the building of the above types of dwellings, particularly

low-cost housing schemes. Workers from the factories should be able to rent this type of accomodation at a reasonable rate.

Another suggestion involves the need to encourage the Muslims in Selangor to wakaf their properties in other forms of wakaf than the usual practice of dedicating it for the purpose of building a mosque/surau or a Muslim burial ground. Efforts must be made to encourage them to wakaf their properties for the building of kindergartens for Muslim children, homes for the handicapped, orphans and the aged and if possible polyclinics in the rural areas. Information and guidelines should be formulated by the Majlis in order to explain to the waqif the need to diversify properties for other charitable projects. Even though the Majlis does not and should not have the necessary powers to force Muslims to wakaf their properties for specific projects, nevertheless, what can be done is for the Majlis to give financial incentives to those who wish to heed the advice of the Majlis. This would perhaps reduce the number of wakaf lands which have been earmarked for the building of mosques/suraus and Muslim burial grounds in the state.

In addition, the Majlis should take the necessary steps to speed up the process of conversion of land

titles which are mostly under the names of the wāqif. This would avoid most of the subsequent problems about legality of possession.

Finally, there must be an enactment of new laws to protect wakaf properties from unscrupulous and irresponsible individuals. There should be new laws to prosecute those people who fail to pay their monthly rent from wakaf properties, and those squatting illegally. The Tenancy Act of 1941 should not be used as a yardstick to enforce the rent rates on wakaf properties because at the end of the day, any charitable institution has a duty to obtain a proper income from its financial undertakings and to enable fair rents to be charged on wakaf property.

Like faraid and wakaf, the administration of baitulmal in Selangor needs to be restructured in order for it to be regarded as an established financial Islamic institution. One way is to upgrade the status of the institution to a level where it can be compared with the State Treasury. It would be difficult for the State Treasury to be amalgamated with the state baitulmal into a single state financial institution, but what the state government can do is to give the baitulmal a fair share of its revenue collection, thus enabling the scope of the baitulmal activities to be expanded. In this way the

revenue of the state baitulmal would not depend only on the collection of zakat/fitrah. The time has come for the state government to end the perception of the baitulmal as being only an office for the collection of zakat/fitrah and elevate this Islamic financial institution to the position similar to that which it enjoyed during the glorious days of early Islam.

In addition, the state government should appoint as members of the Majlis individuals who are symphathetic to and knowledgeable about this Islamic financial institution. As it is now, the majority of those elected to sit as members of the state baitulmal are politicians and civil servants who frequently adopt a lethargic and ambivalent attitude towards the institution. The Majlis should contain not only those who are really well versed in the concept of baitulmal but also those who are familiar with development and planning in the state. The committee should also look into the possibility of appointing well trained zakat officials to supervise the collection of zakat made by the amils, even though this collection is only made once a year, during the fasting month of Ramadhan. The methods and techniques used in the collection of zakat/fitrah should be improved.

Another recommendation concerns the enactment of strict zakat laws. It would be perfectly possible to

introduce an Act whereby Muslims in the state would be prosecuted for failing to pay their zakat on the properties they have acquired. Ironically, only padi farmers obediently and willingly pay the zakat whereas civil servants, intellectuals and professionals seem to ignore the leaflets sent by the Majlis requesting them to pay the amount of zakat that has been calculated on their income. There are at present approximately 1m Muslims in Selangor alone, but unfortunately the total collection of zakat does not reflect this total number of Muslims. The main culprits shirking their responsibilities in Selangor are successful Malay businessmen and entrepreneurs who have reaped the benefits of the New Economic Policy, by which the government hoped to create a new class of Malay technocrats and entrepreneurs who would control a hoped-for 30% of Malaysian business, finance and industries. Strangely enough, this group of people put their priorities on paying their personal income tax rather than fulfilling their Islamic obligation in the payment of the zakat. Businesses where most Malays are involved now such as transportation, hotels, printing presses, travel agencies, construction, manufacturing, and private practices in the field of medicine, law and architecture must be motivated to the payment of business zakat. An incentive for those who are still reluctant to pay zakat was outlined recently by the Minister of Finance¹¹ when

he announced that the Income Tax Department is willing to give rebates to those who pay their zakat and provide receipts for such payments.

Traditionally, property zakat is imposed on gold, silver and savings. At present, most Malays appear not to be interested in keeping these form of property. They rather diversify their investments into the purchasing of houses and land which they can hold on to as a long term investment and the acquiring of shares which can be easily bring about huge profits from dividends. The Majlis should declare that these types of properties are subject to the payment of property zakat.

It might also be suggested that the Selangor state government follow the initiative taken by the Jawatankuasa Baitulmal Wilayah Persekutuan or the Baitulmal Committee of the Federal Territory in building supermarkets, private hospitals and youth hostels to alleviate the shortage of cheap accomodation in the cities. As a result of such an initiative, the state baitulmal would be able to establish a revolving fund from the collection of rents from such projects.

Finally and perhaps the most important of all is the possibility of regarding the institution of baitulmal in Selangor as a commercial institution independent of the

state government and run as a profit-making organization. This would perhaps be the most effective way of prising the institution free of the clutches of uninterested parties who are responsible for its management. In addition, it would relieved the burden which is being imposed upon the Majlis.

There seems good reason to be optimistic about the success of the suggestions that have been discussed. It is up to the government of the day to try to make these suggestions a reality, and it seems at the time of writing that some of these suggestions may be considered and implemented in the long run.

Another positive factor that can be considered is that the implementation of such laws will not affect the non-Muslims in the state. Thus the fear that racial harmony will be threatened in the country's multi-racial society does not arise.

Conclusion.

The early history of Selangor does not suggest that land administration within the context of faraid, wakaf and baitulmal was fully established despite the ruler's freedom to implement it. The Bugis rulers for example were Muslims but as far as these three concepts were

concerned, they seem to have downplayed their importance in the everyday life of their subjects. But having said this, we must agree that there were some forms of law in relation to inheritance, in particular the concept of cakara or charian laki bini which is believed to have originated from the Bugis and may have been widely practiced in matters of division of property among the early Muslims of Selangor.

After the British intervention in 1874, land regulations were introduced some of which were parallel to those of the English system of land tenure. Maxwell's introduction of the Torrens System into Selangor significantly led to a new system of land administration such as the Registration of Titles and the concept of Malay Land Reservation which is still in use in the present day land administration.

Islamic administration reached its crucial period with the introduction of the Muslim Administration Enactment of 1952 by the British. The enactment reinforced the establishment of J.A.I.S., M.A.I.S. and more importantly the setting up of shariah and kathi courts in the proper sense of the word. Despite this, as has been discussed in this thesis, the dichotomy of power between the shariah and the civil courts remained, while the latter always overriding the decision of the former.

The role of the District Officer, the Small Estate Officer, the kathi and the penghulu is very vital for the smooth functioning of faraid, wakaf and baitulmal. This research has described some of the problems that they encountered, especially the limited legal power vested in the Small Estate Officers and kathis.

As for the adats mentioned in the early part of the thesis, it can be said that even though adat pepateh and adat temenggong had already reached Selangor in the early history of the state, they failed to established themselves in the states' land tenure system, unlike adat pepateh which gained a strong foothold in the states of Negeri Sembilan and some parts of Malacca which has been maintained to the present day. This failure to gain influence can be seen in the districts of Ulu Langat and Ulu Selangor, where, despite the presence of large numbers of Minangkabaus, land inheritance practiced by the villagers in these districts still follows the adat kampong which can be described as a manifestation of faraid.

The practicalities of faraid, wakaf and baitulmal in Selangor do face problems and from the discussion in Chapter 4, it can be said that various reasons contribute to the shortcomings in their administration. These are social, and administrative, including legal aspects. The

former involved the attitude shown not only by the villagers towards the workings of Islamic land law but also by policy makers and implementors themselves. For example, the time taken to process a faraid case was approximately 4 months and 2 weeks. We can easily imagine the large number of faraid cases which have to be processed in a particular district.

Administratively, the problem of shortage of staff is a common phenomenon in almost all the districts in Selangor. The various regulations pertaining to the administration of the three Islamic land concepts are still loosely structured and need to be re-examined in order to make them more effective.

With reference to wakaf and baitulmal administration in the state, it is evident from our study that more can be done to improve its image and efficiency. There are many wakaf lands which possess vast potential for investment, especially in the low-cost housing field. Collection of zakat needs to be stepped up as suggested earlier, and in particular many more Muslims in the state have to become involved in the process of zakat payment. The Tenancy Act should also be amended.

It is the opinion of the present writer that land administration within the framework of faraid, wakaf and

baitulmal can be successful provided the mechanics of its operation are well tuned. These involve social and administrative efficiency and legislation, which will form the backbone required for any of these concepts to be effectively operative. There seems now to be some sense of urgency among senior government officials, politicians and more importantly the Menteri Besar himself towards making these Islamic land laws in the state of Selangor more meaningful.¹² What is particularly important is that the laws will have no effect on the other two main races in the state and as a result, one can safely say that the state government will not face real difficulties in the full implementation of laws of faraid, wakaf and baitulmal which is long overdue.

NOTES TO CHAPTER 6

¹ Ahmad Ibrahim, working paper entitled 'Aspek-Aspek Perchangghahan Undang-Undang Tanah Sekarang Dengan Undang-Undang Islam' at the Seminar dan Bengkel Kanun Tanah Negara Ala Malaysia, 2-6 December, 1986, Kuala Lumpur. see also Nik Rashid, paper entitled 'Reformasi Tanah-Satu Perspektif', at the same Seminar.

² Ahmad Ibrahim, unpublished working paper entitled, 'Towards an Islamic Legal System in Malaysia'.

³ Conference entitled 'Towards an Understanding of the Malay Culture', held in Kuala Lumpur as reported by Utusan Malaysia, Malay National Newspaper dated 12th November, 1986, p. 2.

⁴ Ibid.

⁵ Seminar entitled, 'Towards the Implementation of Islamic Laws in Malaysia', as reported by the New Straits Times, Thursday, June 18, 1988, p. 2.

⁶ Utusan Malaysia dated 26th March, 1988, p. 2.

⁷ see Cadangan Pindaan Akta Pesaka Kecil, prepared by the Office of the Director General of Land and Mines, Kuala Lumpur.

⁸ Ibid.

⁹ Edward William Lane, Arabic - English Lexicon, (Lahore, 1893), p. 2789.

A calculator produced specifically for the calculation of faraid shares was presented to the participants at the Seminar on Faraid Peringkat Kebangsaan, held at the Universiti Kebangsaan Malaysia, 1983.

¹⁰ These are industrial areas allocated mainly for foreign investors to set up light industries - the main aim is to provide employment opportunities for rural youth in order to halt the rural-urban migration by these groups of people.

¹¹ Announcement made by Daim Zainuddin, Minister of Finance, Utusan Malaysia dated 29th March, 1988, p. 3.

12 The present Menteri Besar, Datuk Muhammad bin Mohd. Taib seems to have a strong sentiment towards the implementation of Islamic administration. The State Mufti's views are very much appreciated by him and often adopted, and the rapport between the two is very close indeed.

APPENDIX A

Total Acreage of Fresh Land Being Alienated to Non
Malays for Mining and Rubber in 1899 and 1900
in Selangor

<u>Districts</u>	<u>Mines</u>	<u>Rubber</u>
<u>1899</u>	<u>Acres</u>	<u>Acres</u>
Kuala Lumpur	3,078	234
Klang	600	915
Kuala Selangor	-	1,017
Ulu Selangor	4,871	549
Kuala Langat	-	367
Ulu Langat	3,412	616
Total	11,963	3,699

Source: Selangor Administration Reports, 1900

(contd. APPENDIX A)

Rubber Statistics
Nationality of Ownership, Estates, 1940

	<u>European</u>		<u>Chinese</u>		<u>Indian</u>		<u>Other</u>		<u>Total</u>	
	(No)	(Acres)	(No)	(Acres)	(No)	(Acres)	(No)	(Acres)	(No)	(Acres)
*F.M.S.	-	-	-	-	-	-	-	-		
Perak	229	262,619	115	29,933	84	19,898	12	2,244	440	314,694
Selangor	216	317,341	109	35,748	51	8,745	5	1,183	381	363,017
N. Sembilan	163	241,170	103	30,374	69	13,960	15	8,629	350	294,133
Pahang	45	58,179	100	41,548	27	7,623	1	140	173	107,490
Total F.M.S	653	879,309	427	137,603	231	50,226	33	12,196	1,344	1,079,490

Source: Malayan Agricultural Statistics,
Kuala Lumpur: Caxton Press, 1940.

APPENDIX B

Copy of Land Title where the Concept of Faraid
is Adopted During British Rule in the District

of Kuala Langat

164/37.

(7) in K.Lgt. Lds ES.32/50

Form E.

TRANSMISSION Vol. 1-30

Proclamation No. 317-1-7-50 at 10.30

STATE OF

Selangor

Rt. 864167 / 71

29.6.50

District of

Kuala Langat

APPLICATION FOR DISTRIBUTION No. 32 OF 1950.

IN THE ESTATE OF Haji Dahlan bin Hasan Isbat alias

DECEASED.

Haji Dahlan bin Haji Hassan

Siti ~~Hassan~~ binti Haji Omar of Mancong Darat

APPLICANT.

The Probate and Administration Enactment (Cap. 8).

ORDER UNDER SECTION 184.

This matter coming on for disposal at the Land Office, Telok Datoh on the 28th day of June, 1950 before me the undersigned Collector for the district of Kuala Langat

IT IS ORDERED

Firstly that such part of the immovable property of the deceased as is described in Schedule I hereto be distributed in the manner provided in the said schedule.

Secondly that such part of the movable property of the deceased as is described in Schedule II hereto be distributed in the manner provided in the said schedule.

Thirdly that the Letters of Administration hereunto annexed and marked Form I be granted to ~~of~~ subject to the limitations therein contained.

Secondly

Fourthly that whereas the net value of the estate is found by me to be \$ 4,425/-

the Estate Duty fee thereon amounting to \$ 44.25 shall be paid by Siti Hassan binti Haji Omar vide Rt. 864167 of 29.6.50

Given under my hand and seal at Land Office, Telok Datoh this 28th day of June 1950.



[L.S.]

Collector.

I certify that the above-mentioned Estate Duty fee has this day been paid.



[L.S.]

Collector.

28th June 1950

Note.—(i) Where the order is for immediate distribution of the whole estate, clause three may be omitted.

(ii) Where the order is for administration only Form F only need be used.

(contd. APPENDIX B)

SCHEDULE I.

IMMOVABLE PROPERTY TO BE DISTRIBUTED.

Title No.	District.	Mukim.	Name of beneficiary.	Share to be registered.
3575 Lot 1142	Kuala Langat	Kelanang	Siti Asnah binti Haji Omar	9/144
2986 Lot 1137	-do-	"	Siti Rajiah binti Haji Dahlan	7/144
3964 Lot 1125	-do-	"	Darviah binti Haji Dahlan	5/144
3375 Lot 1707	-do-	"	Zumaro binti Haji Dahlan	5/144
			Mohamed Harawi bin Haji Dahlan	7/144
			Mahisuri bin Haji Dahlan	7/144
			Tarawi bin Haji Dahlan	7/144
			Siti Asnah binti Haji Omar	9/144
			for Mohamed Harawi bin Haji Dahlan	7/144
			14/144 share, Mahisuri bin Haji Dahlan	7/144
			14/144 share & Tarawi bin Haji Dahlan	7/144
			14/144 share (Minors)	7/144

Dated at Land Office, Telok Datoh,
28th June 1950.

Collector's caveat to protect
whereof of minors.

Record of Registration by Registrar of Titles and/or Collector of Land Revenue



*Memorial made in the memorial register Kelantan
volume Nos. VI, VII, VIII, & IX folio 74, 200, 48, 89 this 1st day of
June, 1950 at 10.30 a.m.*



SCHEDULE II.

MOVABLE PROPERTY TO BE DISTRIBUTED.

Description.	Name of beneficiary.
Nil	

Dated at Land Office, Telok Datoh,
28th June 1950.



APPENDIX C

Copy of Surat Tauliah or Letter of Appointment

(Imam)



بسمہ ملیا سلطان نگرہی سلاغور

سورت تولیہ امام مسجد

* بسم الله الرحمن الرحيم *

مفیکوت کو اس یقیناً انتوکون ددالم اورغ ۲ منتد بیران او گام اسلام ۱۹۵۲ (اوندغ ۲ نگرہی سلاغور نمبر ۳ ۱۹۵۲) اند فصل ۱۱۶ چراین (۱) (۴) دان (۵) بهوا ادالہ
لہ دفرکنکن منجادی شورغ درغند فکادی مسجد بایت امام مسجد قریہ
دمقیم

۲. بهوا سلاہین درغند کو اس یقیناً کوننیاکن کران معقدکن نسکاح اورغ ۲ اسلام یقیناً بسروالی
ادالہ
فرقہ پوران جوگ کلاکوان اتق ۲ بواہ مسجد برکنان او گام اسلام ددالم قریہ.

۳. مک هندقلہ
مسجد تمقاتن یغ منجالتکن فکرجان مفیکوت کھندق تولیہ یقیناً کوننیاکن کقد نساظر مسجد ایت.
۴. مک هندقلہ
تفق حاضر کم مسجد تمقاتن قد تیق ۲

ہاری جمعت اس صفت امام یقیناً فکرجان جواب دانقارا مامومن انتوق مہقرناکن فرض جمعت دمسجد ایت.
۵. مک هندقلہ
ستباس حاضر مفتوای مجلس
طلب العلم ددالم مسجد تمقاتن سرت مفکالتکن مامومن سقای فکون دان راجین حاضر کم مجلس طلب العلم
ایت. تراومان منویکن سمہیغ جمعت.

۶. مک سکالہ
ماوتماکن حاضر کم مسجد تمقاتن قد
تیق ۲ وقت سمہیغ فرض کران مفتوای سمہیغ برجماعہ دمسجد ایت (تراومان سکالی امام یقیناً
دایکت اولہ فراپوران دقریہ مسجد یغ مستیکن ای حاضر کم مسجد قد تیق ۲ وقت سمہیغ فرض کران
جادی امام سمہیغ ایت).

۷. مک سکالہ
حاضر دتیق ۲ تمقت کماہین اورغ ۲
اسلام ددالم قریہ کران مفتوای دان ممتد مہقرناکن میت ایت فک سلسی دقپورکن.

۸. دمکینلاکھی
بولہ منفکف دغن تیاد وارنہ جک
فکادی فوایس دکتھوی تیاد سیاف اہلی قریہ ددقانی مہوات کسلاہن مفیکوت قوائکواس اورغ ۲
منتد بیران او گام اسلام سلاغور دالم فصل ۶۱ (ب) (۱) (ب) دان (ت)

۹. دمکینلاکھی
بولہ جادی فندعوا دمکھ قاضی
تمقاتن مفیکوت فراپوران اورغ ۲ منتد بیران او گام اسلام سلاغور دالم فصل ۶۴ (ب) (ج).
سارغ دبرکاتہی اللہ سببہ سانسہ واسمالی.
دغن تیقہ فرنتہ دولی یقیناً ملیا.

سر فوایس ددالم فجابت مجلس او گام اسلام سلاغور

یقیناً فراپورا مجلس او گام اسلام
نگرہی سلاغور.

ند ہاریپولن
برسمان
۱۹

APPENDIX D

Income from Zakat/Fitrah for the State of Selangor 1970 - 1983

<u>Year</u>	<u>Zakat Fitrah</u>	<u>Property Business Zakat</u>	<u>Padi Zakat</u>	<u>Poultry Zakat</u>	<u>Corporation Zakat</u>	<u>Total</u>
1970	476,000.60	40,631.88	7.7	1.6	-	524,616.98
1971	507,657.04	37,434.86	5.5	21.7	-	696,390.70
1972	549,430.80	41,636.86	6.0	15.8	-	702,505.84
1973	729,708.54	21,687.79	2.7	6.6	-	804,505.84
1974	650,104.12	38,938.15	5.6	1.2	-	697,327.96
1975	669,900.32	23,843.54	3.2	6.4	-	741,041.9
1976	732,780.16	30,386.89	3.8	5.3	-	806,487.23
1977	777,944.62	47,388.89	5.5	5.4	0.1	872,528.45
1978	826,909.90	88,501.47	9.1	805	0.08	969,839.67
1979	1,024,164.0	120,170.01	10.1	500	0.04	1,190,364.40
1980	1,180,338.3	179,571.03	12.84	-	-	1,398,484.70
1981	1,248,711.61	384,841.17	21.64	8.14	-	1,778,392.60
1982	1,403,302	369,536.	18.4	2.8	185,052.38	2,013,282.30
1983	1,537,181	483,178.13	20.8	1.2	284,269.12	2,304,608.2

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Source : Zakat and Fitrah Income Statement for the Years
1970 - 1983, Jabatan Agama Islam Selangor, 1984.

APPENDIX ETotal Income Derived From Zakat and Fitrah From All Districts
in Selangor (1978 - 1983)

<u>District</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
1. Klang	152,507	188,942	226,598	226,188	252,676.3	271,257.3
2. Ulu Langat	91,609.60	114,192	132,563.8	136,484	154,296.2	174,819.9
3. Kuala Langat	83,013.10	97,568	111,683.00	112,694.2	52,346.	124,763.3
*4. Gombak Timur	67,539.30	84,710	103,653.2	113,035.3	140,681.3	163,813.3
5. Petaling Jaya	66,721.60	87,979	104,439.2	114,184.6	129,569.	147,134.7
+6. Syah Alam	40,622.30	54,086	70,041.4	82,638.1	97,164.2	104,880.6
7. Gombak Barat	53,733.60	67,238	79,686.2	85,656.6	98,975.6	114,970.1
8. Sabak Bernam	50,221.40	49,348	54,375.2	53,547.81	56,691.6	58,763.4
&9. Sungai Besar	50,221.40	61,846	67,694	72,739.40	77,032.0	83,774.3
10. Kuala Sel.	50,182.30	60,310	67,315.6	68,761.1	74,789.0	78,082.1
£11. Tg. Karang	44,575.00	52,496	57,919.4	59,182.1	65,401.6	71,816.0
12. U. Selangor	54,113.70	65,392	73,051.0	74,181.7	80,147.3	87,734.3
13. Sepang	28,396.8	34,620	39,045.6	39,091.8	43,247.3	44,776.8
-14. Armed Forces	3,670.3	5,440	2,272.6	7,240.5	7,868.3	2,956.8
<u>Total</u>	<u>836,166.4</u>	<u>1,024,164</u>	<u>1,180,338.2</u>	<u>1,245,625.9</u>	<u>1,403,302.6</u>	<u>1,537,181.3</u>

* A fairly new district formed in the late 70.

+ District Capital, partly managed by the Petaling District as far as land administration is concerned.

& Sub-district of Sabak Bernam.

£ Sub-district of Kuala Selangor.

- Personnel of the Armed Forces residing in the state of Selangor.

Source: Zakat and Fitrah Income Statement, Jabatan Agama Islam Selangor, 1984.

BIBLIOGRAPHY1. Primary Sources:

Abdullah Yusuf Ali, The Holy Qur'an, (Text, Translation and Commentary), published by Amana Corporation, Maryland, U.S.A., 1983.

Allen, J. V. and others, A Collection of Treaties and other Documents Affecting the States of Malaysia 1761-1963, Oceana Publications, London, 1975.

Al-Nawawi, Minhaj-et-Talibin, translation by E.C. Howard, published by William Clowes and Sons, London, 1914.

Reports and Documents

Federated Malay States Malay Reservation Enactment, Chapter 142, 1933.

File Rancangan-Rancangan Tanah, Pejabat Tanah/Daerah Kuala Langat, Selangor Darul Ehsan.

File Section on Pesaka Kecil, Pejabat Pesaka Kecil, District of Kuala Langat, Selangor Darul Ehsan.
File No. 49/70.

File Section on Baitulmal, Zakat/Fitrah, No. 7028A.

File on Income and Expenses Account, Jabatan Agama Islam Selangor, Selangor Darul Ehsan, 1978.

File on Statement of Income for zakat/fitrah,
Jabatan Agama Islam Selangor, Selangor Darul Ehsan,
1983.

Malaysia Official Year Book, 1964.

Mid Term Review, Second Malaysia Plan 1971 - 1975
Kuala Lumpur: Government Printers, 1973.

Perak Government Gazette, No. 308, Enactment No. 5,
1900.

Probate and Administration Enactment Act, 1959.

Selangor Administration Report, 1891.

Selangor Administration Report, 1895.

Selangor Administration Report, 1931.

Selangor Annual Report, 1889.

Selangor Government Gazette, No. 153, July, 1890.

Selangor Government Gazette, No. 30, September,
1896.

Selangor Administration of Muslim Law Enactment,
1952.

Small Estate (Distribution) Act, 1955.

Interviews

Ali Sario, Chief Clerk, Land Office, district
of Kuala Langat.

Kamarulzamman Habib, Head, Section on Small
Estate Property of the Department of Lands and
Mines, Kuala Lumpur.

Mariyam Lamri, Small Estate Officer for the district of Kuala Langat.

Muhammad bin Bandar, late Penghulu of Mukim Tanjong Dua Belas, Kuala Langat.

Muhammad Mohyi, officer-in-charge of wakaf, Jabatan Agama Islam Selangor, Syah Alam.

Muhammad Zaki, officer-in-charge of baitulmal, Jabatan Agama Islam Selangor, Syah Alam.

Newspapers

New Straits Times of Malaysia, 18th June, 1986.

Utusan Malaysia, 12th November, 1986.

Utusan Malaysia, 26th March, 1988.

Utusan Malaysia, 29th March, 1988.

2. Unpublished Theses and Working Papers

Ahmad Embong,	'Mengemaskinikan Pentadbiran Pesaka Kecil', Working Paper presented at the <u>Seminar Pegawai Penyelesai Pesaka Kecil</u> , Morib, Selangor 1981
---------------	--

Ahmad Ibrahim,	unpublished Working Paper entitled, ' <u>The Shariah Court and its Place in the Judicial System</u> ', 1985.
----------------	--

-----,	unpublished Working Paper entitled. ' <u>Islamic Law of Wills</u> ', 1985.
--------	--

- , unpublished Working Paper entitled, 'Towards an Islamic Legal System in Malaysia', 1986.
- , 'Harta Penama', Working Paper presented at the Seminar Faraid Kebangsaan, June 1983, at the Universiti Kebangsaan Malaysia, Bangi.
- , 'Aspek-Aspek Perchangghahan Undang-Undang Tanah Sekarang Dengan Undang Islam', Working Paper presented at the Seminar dan Bengkel Kanun Tanah Negara Ala Malaysia, 2-6 December, 1986, Kuala Lumpur.
- Ahmad Rafei Abdullah, Struktur, Fungsi dan Organisasi, Jabatan Agama Islam Selangor, B.A. Honours Thesis, Universiti Malaya, Kuala Lumpur, 1970.
- Azizan Abdul Razak, The Administration of Islamic Law in Malaysia, M.A. Thesis, University of Kent at Canterbury, 1978.
- Ismail Abdullah, 'Bahagian Pesaka Kecil dan Masaelah yang diHadapi', at the Seminar Pegawai Penyelesai Pesaka Kecil, Morib, Selangor, 1981.
- Kamarulzaman Habib, 'Sistem Pembahagian dan Pengurusan Pesaka diSemenanjung Malaysia, Working Paper presented at the Seminar Faraid Kebangsaan, Universiti Kebangsaan Malaysia, Bangi, June, 1983.
- Lim Yoon Lin, The Administration of Justice in the Federated Malay States, 1896 - 1914, Ph.D. Thesis, University of London, 1960.
- Mohd. Ruffi Eean, Peranan Ekonomi Zakat Dalam Mengatasi Masaelah Kemiskinan (Kes Jabatan Agama Wilayah Persekutuan dan Jabatan

Agama Islam Selangor), B.A. Honours Thesis, Universiti Kebangsaan Malaysia, Bangi, 1978.

- Mohd. Zin, 'Masaelah Bahagian Harta Pesaka Kecil', at the Seminar Pegawai Penyelesai Pesaka Kecil, Morib, Selangor, 1981.
- Nik Rashid, 'Reformasi Tanah-Satu Perspektif', Working Paper presented at the Seminar dan Bengkel Kanun Tanah Negara ala Malaysia, 2-6 December, 1986.
- Salleh Buang, 'The Law of Property in Malaysia, Prospects of Islamisations, Law Seminar, at International Islamic University, Petaling Jaya, July, 1986.
- Siti Shaika, The Role of Woman Under Shariah Law in Malaysia M.A. Thesis, University of Kent at Canterbury, 1975.
- Syed Othman A., 'Konsep Wakaf dan Perlaksanaan nya di Malaysia', Working Paper presented at the Seminar Kebangsaan Pengurusan dan Pentadbiran Harta-Harta Wakaf, at Ipoh, November, 1986.
- Wan Abdul Halim, 'Kearah Melengkapkan Diri dan Menyelaraskan Tindakan Pegawai Pesaka Kecil', Working Paper presented at the Seminar Pegawai Penyelesai Pesaka Kecil, Morib, Selangor, 1981.
- Yusof Daud, 'Penyelesaian Pesaka Kecil, Masaelah Pentadbiran dan Pembahagian', Working Paper presented at the Seminar Pegawai Penyelesai Pesaka Kecil, Morib, Selangor, 1981.

Zahariah Sulaiman, Penyelenggaraan Kutipan dan Pengagihan Zakat diSelangor, B. Econs. Honours Thesis, Universiti Pertanian Malaysia Serdang, 1980.

3. Secondary Sources

Abdul Aziz Zaid, The Law of Bequest, London: Scorpion Publishers, 1987.

Abdul Samad, Pesaka Selangor, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1966.

Abū Yūsuf, Kitāb al-Kharāj, see Ben Shamesh, Taxation in Islam, 1969.

Aghnides, N. P., Mohammedan Theories of Finance, New York: University of Columbia Press, 1916.

Ahmad Ibrahim, Islamic Law in Malaya, Singapore: London University Press, 1960.

-----, 'Islam and Customary Law in Malaysia', Malayan Law Journal, Singapore: 1963.

Ahmad Nazri A., Melayu dan Tanah, Kuala Lumpur: Media Intelek Publications, 1985.

Aitken, Leigh & Colin, A., Development and Environment in Peninsular Malaysia, Singapore, 1975.

Al Attas, S.N., Preliminary Statement On A General Theory Of The Islamization Of The Malay-Indonesian Archipelago, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1969.

- Ameer Ali, A Short History of the Saracens, London: 1951.
- , Mohammedan Law, Tagore Law Lectures, Calcutta: 1929.
- Andaya B.A., L.A., A History of Malaysia, New York: St. Martin Press, 1982.
- Anderson, N. J., Law Reform in the Muslim World, London: Athlone Press, 1976.
- , 'Recent Developments in Sharia Law IX: The Waqf System', The Muslim World, Leicester: Islamic Foundation, 1980.
- Balan, K., 'Testamentary and Bequeathable in Islamic Law of Will', in Jernal Undang-Undang, Vol. 1Kuala Lumpur: 1975.
- Banks, David, 'Islam and Inheritance in Malaya', American Ethnologist, Vol. 3, Washington D.C.: American Anthropological Association, 1976.
- Bastin & Winks R.W., Malaysia: Selected Historical Readings, Kuala Lumpur: Oxford, University Press, 1966.
- Ben Shamesh, Taxation in Islam, Leiden: E.J. Brill, (3 Vol.);
Vol. I. Abū Yūsuf, Kitāb al-Kharāj, 1958.
Vol. II. Qudāma b. Ja'far, Kitāb al-Kharāj, 1965.
Vol. III. Yahyā b. Ādam, Kitāb al-Kharāj, 1969.
- Braddel, Roland, The Law of the Straits Settlements A Commentary, Kuala Lumpur: Oxford, University Press, 1982.

- Buss, Tjen, 'Malay Law', The American Journal of Comparative Law, Vol. VII, Michigan: University of Michigan Press, Ann Arbor, 1958.
- Buyong Adil, Sejarah Selangor, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1981.
- Chow, E., 'The Reasons for British Intervention in Malaya: Review and Reconsideration, in Journal Southeast Asian Studies, Vol. 6, Singapore: Singapore University Press, 1965.
- Chua, B.L., 'Land Registration in Singapore and the Federation of Malaya', University of Malaya Review, Singapore: 1959.
- Coulson, N.J., Succession in the Muslim Family, Cambridge: Cambridge University Press, 1971.
- Cowan, C.D., & Burns, Sir Frank Swettenham's Journals 1874-1876, Kuala Lumpur: Oxford University Press, 1975.
- Das, S.K., The Torrens System in Malaya, Singapore: Malayan Law Publishers, 1963.
- Doi, Abdul Rahman, Shariah: The Islamic Law, London: Ta Ha Publishers, 1984.
- Enriquez, E.M., Malaya, An Account of its People, Flora and Fauna, London: Hurst and Blackett, 1927.
- Fyzee, A.A., Outline of Muhammadan Law, 3rd Ed. London: Oxford University Press, 1964.

- Grist, D.H., Malayan Agricultural Statistics,
Kuala Lumpur: Caxton Press, 1940.
- Gullick, J.M., A History of Selangor 1742 - 1957,
Singapore: Eastern Universities
Press, 1960.
- , Indigeneous Political Systems of
Western Malaya, London: Athlone
Press, 1958.
- Hailani Muji Tahir, Baitulmal Institusi Kewangan Negara
Islam, Kuala Lumpur: Al Rahmaniah,
1982.
- Heussler, Robert, British Rule in Malaya, The Malayan
Civil Service and its Predecessors,
Oxford: Oxford University Press,
1981.
- Hooker, M.B., Islam in South-East Asia, Leiden:
E.J. Brill, 1983.
- , 'A Note on the Malayan Legal Digest'
Journal Malaysian Branch of Royal
Asiatic Society Vol. 41, London: 1968.
- , Adat Laws in Modern Malaya, Kuala
Lumpur: Oxford University Press, 1972.
- , Personal Laws of Malaysia, Kuala
Lumpur: Oxford University Press, 1976.
- , Islamic Law in South-East Asia,
Singapore: Oxford University Press,
1984.
- , 'Readings in Malay Adat Laws',
Journal of Comparative Law, Vol. 16,
London: British Institute of
International and Comparative Law
1968.

- Ibn Manzūr, Lisān al-ʿArab, Beirut: 1975.
- Imammuddin, S.M., 'Bayt-al-Mal and Banks in the Medieval Muslim World', Islamic Culture, January, Hyderabad: 1960.
- Ismail Hamid, The Malay Islamic Hikayat, Monograph 1, Institut Bahasa, Kesusasteraan dan Kebudayaan Melayu, Universiti Kebangsaan Malaysia, Bangi: 1983.
- Jackson, J.C., Planters and Speculators: Chinese and European Agricultural Enterprise in Malaya, 1786-1912, London: Oxford, University Press, 1968.
- , 'Population Changes in Selangor State 1850-1891', Journal of Tropical Geography, No. 19. Singapore: 1964.
- Johns, A.H., 'Islam in South-East Asia' in (ed) Readings on Islam in South-East Asia, Singapore: Institute of South East Asian Studies, 1985.
- Kennedy, J., A History of Malaya 1400 - 1959, London: Macmillan and Co. Ltd., 1971.
- Khazim Mohd.Tamrin, Orang Jawa DiSelangor, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1984.
- Khoo Kay Kim, The Western Malay States 1850 - 1873, Kuala Lumpur: Oxford University Press, 1972.
- Kramer, J.& Gibb, H., A Shorter Encyclopaedia of Islam, Leiden: E.J. Brill, 1961.
- Kratoska, Paul, 'Ends that We Cannot Forsee', Journal of Southeast Asian Studies, Vol. 14, Singapore: Singapore University Press, 1983.

- Ladjensky, W. Isaac, 'Agricultural Policies of British Malaya', Foreign Agriculture, Washington D.C.: 1941.
- Lane, Edward W., Arabic-English Lexicon, Book 1, Part 8, Lahore: Islamic Book Centre, 1893.
- Liaw Yock Fang, Undang-Undang Melaka, Leiden: E.J. Brill, 1975.
- Lim Teck Gee, Peasants and Their Agricultural Economy in Colonial Malaya 1874 - 1941, Kuala Lumpur: Oxford University Press, 1971.
- Mackeen, Abdul Majid, Contemporary Islamic Legal Organization in Malaya, New Haven, Connecticut: 1969, Yale University Press.
- Mahmud, I., Muslim Law of Succession and Administration, Karachi: Pakistan Law House, 1958.
- Majul, Cesar Adib, 'Theories on the Introduction and Expansion of Islam in Malaysia', in Silliman Journal, Vol. II, Pt. 4, Phillippines: 1964.
- Mannan, M.A., Islamic Economic Theory and Practice, Lahore: M. Ashraff Press, 1967.
- Maxwell, W.E., 'The Law and Customs of the Malays with Reference to the Tenure of Land (1884) in Journal Malayan Branch of Royal Asiatic Society, 13, 75, London.
- Middlebrook, S.M., 'Yap Ah Loy, 1837 - 1885', Journal of Royal Asiatic Society, Vol. 24 Pt. 2., London: 1951.

- Mills, L.A. British Malaya 1827 - 1874, Kuala Lumpur: Oxford in Asia Historical Reprints, 1966.
- Milner, A.C., 'Islam and Malay Kingship', in Readings of Islam in South-East Asia, Singapore: Institute of South-East Asian Studies, 1985.
- Mohd. Nor b. Ngah, 'A Preliminary Study of the Institution of Zakat in Malaysia', in Islamika III, Muzium Negara, Kuala Lumpur, 1985.
- Mohd. Zain Othman, Islamic Law with Special Reference To The Institution of Waqf, Kuala Lumpur: Prime Minister's Department, Religious Affairs Division, 1982.
- Moulavi Babu Sahib, The Law of Inheritance in Islam, Singapore: Al Islam Publisher, 1979.
- Nagata, J, The Reflowering of Malaysian Islam: Modern Religious Radicals and Their Roots, Vancouver: University of British Columbia Press, 1984.
- Newbold, T.J., Political and Statistical Account of British Settlements in the Straits of Malacca, (Reprint of the 1839 ed.) Kuala Lumpur: Oxford University Press 1971.
- Nordin Selat, Sistem Sosial Adat Pepateh, Kuala Lumpur: Utusan Publications, 1982.
- Ooi Jin Bee, Land, People and Economy in Malaya, London: Longmans Publication, 1963.
- Othman Hj. Ishak, 'Fatwa dalam Perundangan Islam dan Kedudukan Nya diNegeri Selangor', Tamadun Islam, Kuala Lumpur: 1980.

- , Hubungan Antara Undang-Undang Islam dan Adat, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1974.
- Qudāma b. Ja'far Kitāb al-Kharāj, see Ben Shamesh, Taxation in Islam, Leiden: 1969.
- Radcliffe, David, 'The peopling of the Ulu Langat District', Indonesia, No. 8., Djakarta: Ford Foundation.
- Rauf, M.A., A Brief History of Islam With Special Reference to Malaya, Kuala Lumpur: Oxford University Press, 1964.
- Sadka, E., The Protected Malay States: 1874 - 1895, Kuala Lumpur: University of Malaya Press, 1968.
- Schacht, J. & Lewis B. The Encyclopaedia of Islam, Vol. II, Leiden: E.J. Brill, 1961.
- Senfleben, R., Background to Agricultural Policy in Malaysia, Hamburg: Asienkunde, 1984.
- Siddiqi, S., Public Finance in Islam, Lahore: M. Ashraff Press, 1948.
- Sihombing, J., 'The National Land Code', Malayan Law Journal, Kuala Lumpur: Law Publishers, 1981.
- Suhrawardi, A., 'The Waqf of Movables', Journal of Royal Asiatic Society of Bengal, Vol. VII, June, London: 1911.
- Syed Abdul Majid, 'Waqf as Family Settlements Among the Muhammadans', Journal of Comparative Legislation, Vol. I, 1958.

- Tate, D.J.M., The Making of Modern South-East Asia, Oxford: Oxford University Press, 1971.
- Taylor, E.N., 'Malay Family Law', Journal Malayan Branch of Royal Asiatic Society, No.5: London: 1937.
- Turnbull, C.M., The Straits Settlement 1826 - 1867; Indian Presidency to Crown Colony, London: Athlone Press, 1972.
- Tyabji Faiz B., Muhammadan Law, 3rd Ed. Bombay: Tripathi, 1940.
- Voon Phin Keong, 'Malay Reservations and Malay Land Ownership in Semenyih and Ulu Semenyih Mukims, Selangor', Modern Asian Studies, 10.4: Cambridge: Cambridge University Press, 1976.
- , 'Spatial Patterns of Agriculture in Semenyih', Journal of Tropical Geography, No. 19, Singapore: 1964.
- , 'Malay Reservation and Landownership in Selangor', Modern Asian Studies, Cambridge: Cambridge University Press, 1976.
- , 'Rural Land Ownership and Development in the Malay Reservations', Journal SouthEast Asian Studies, Singapore; 1977.
- Wilkinson, R.J., A History of the Peninsular Malays with Chapters on Perak and Selangor, Papers on the Malay States, Singapore: Federated Malay States Govt. Press, 1923.
- Wilson, T., 'The Inheritance and Fragmentation of Malay Padi Lands in Krian Perak',

Malayan Agricultural Journal, Vol. IV., Kuala Lumpur: Department of Agriculture, 1945.

Winstedt, R., Sir, The Malays: A Cultural History, (revised by Tham Seong Chee), Singapore: Graham Bush (Pte) Ltd., 1981.

-----, 'A Malay Legal Miscellany', Journal Malayan Branch of Royal Asiatic Society, Vol. XXV, Pt. I, London: 1952.

-----, 'A History of Selangor', Journal Malayan Branch of Royal Asiatic Society, Part 3, London: 1945.

Wong, David, Land Tenure in the Federated Malay States, Singapore: Singapore University Press, 1975.

Wong Lin Ken, The Malayan Tin Industry, Arizona: University of Arizona Press, 1965.

Yahyā b. Ādam, Kitāb al-Kharāj, see Ben Shamesh, Taxation in Islam, Leiden: 1969.

Yegar, Moshe, Islam and Islamic Institutions in British Malaya, Jerusalem: Magness Press, 1979.

Zaharah Hj. Mahmud, 'The Period and Nature of Traditional Settlement in Malay Peninsula', Journal Malayan Branch of Royal Asiatic Society, Vol. 43, Pt. 2, London: 1973.

Ziauddin Ahmed, 'Waqf, as an Instrument of Perpetuity, - an Assessment', Islamic Studies, 26:2, Islamabad: Islamic Research Institute, 1987.

-----,

'Zakat and Economic WellBeing',
Islamic Studies, Vol. XX, No. 1,
Islamabad: Islamic Research Institute
1981.